

TECHNICAL EDUCATION DEPARTMENT

The 5th June, 1969

No. 3123-PWIII(T)-69/15249.—On transfer from Government Polytechnic, Ambala, Shri Om Parkash Supple, Lecturer in Civil Engineering, relinquished charge of his duties with effect from 19th May, 1969 (afternoon).

R. I. N. AHOOJA, Secy.

LABOUR DEPARTMENT

The 27th May, 1969

No. 3001-A.S.O.II-Lab-69/12609.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Vijay Industries, Jain Bara Dari, Gurgaon.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 97 of 1968

Between

SHRI BUDHI BALLABH WORKMAN AND THE MANAGEMENT OF M/S VIJAY INDUSTRIES, JAIN BARA DARI, GURGAON

Present—

Shri Shardha Nand, for the workman.

Shri S. L. Gupta, for the management.

AWARD

Shri Budhi Ballabh was employed as a compositor with M/s Vijay Industries, Jain Bara Dari, Gurgaon. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—vide Government Gazette Notification No. I.D./GG/43-A/68/, dated 25th October, 1968 :—

Whether the termination of service of Shri Budhi Ballabh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed by the workman and the management filed their written statement. The case of the workman as given in his statement of claims is that he proceeded on 4 days leave with effect from 3rd June, 1968, followed by 10 days extension of leave with effect from 7th June, 1968 and further extension of leave for fourteen days. That is leave up to 1st July, 1968 and when he reported for duty on 2nd July, 1968 he was not allowed to join duty and was told that he has been dismissed from service. The case of the management on the other hand is that the claimant just absented himself with effect from 3rd June, 1968, without any application for leave and a letter, dated 6th June, 1968, marked Ex. M/1 asking for extension for leave for 10 days was received on 11th June, 1968 and in this letter also the reason for seeking extension of leave was not disclosed and so he was informed in writing that he should report for duty within 24 hours but he did not do. So his name was struck off from the rolls. The pleadings of the parties gave rise to the following issue :—

Whether the termination of service of Shri Budhi Ballabh claimant was justified and in order ? If not, to what relief is he entitled ?

The parties were given an opportunity to produce evidence in support of respective contentions. Shri Ramesh Chander, Partner of the respondent concern, appeared as a witness on behalf of the management and the claimant also appeared as a witness in support of his case. He did not produce any other evidence.

The claimant in his evidence has stated that his 3½ years old child suddenly fell ill on 1st June, 1968, in the afternoon and he got this information while he was working with press. So he orally asked for leave which was granted and he brought the child to the Civil Hospital and also showed him to Dr. Grewal. The claimant says that since the condition of his child was serious he brought him to Delhi and got him examined by Doctor J. C. Sharma a private medical practitioner who admitted his child in his Hospital. The claimant says that the next day, i.e., 2nd June, 1968 was a close day and he sent a written application through his wife who had to return to Gurgaon because his younger child was still sucking milk. The claimant further states that since his child did not get well so he applied for extension of leave for 10 days on 6th June, 1968 and the treatment of Dr. Jagdish continued and the condition of the child improved. The Doctor advised that the child should be kept on in Delhi and so he applied for further extension of leave for 14 days. According to the claimant the child throughout continued in the Hospital of Dr. Jagdish and that he did not receive any intimation from the management as to whether his application for leave had been sanctioned or not.

The claimant has not produced the Doctor who treated his child in order to corroborate his version that his child was really very ill or that the child remained in the Hospital of Dr. Jagdish throughout the month of June, 1968. Instead the claimant has produced a medical certificate purported to have been given by Dr. J. C. Sharma and which is marked Ex. W/3. This certificate is dated 1st June, 1968 and is to the effect that Vijay Kumar, son of

Budhi Ballabh is suffering from liver and stomach trouble and therefore, he has been advised treatment for one month with effect from 1st June, 1968, which was absolutely necessary for the restoration of the health. If this certificate is correct it would mean that when the child was brought to Delhi on 1st June, 1968, the Doctor was able to immediately diagnose the trouble and was also there and then able to come to the conclusion that the treatment of the child would take exactly one month. If that was so, it is not understood why the claimant first applied for 4 days leave and then asked for 10 days extension followed by another extension for 14 days.

It would also be not out of place to point out at this stage that the claimant in his letter, dated 6th June, 1968. Ex. M/1 in which he asked for extension of leave for 10 days did not mention the reason why the extension of leave was asked for. He simply wrote in a very vague and ambiguous language that the circumstances in which he had to come to Delhi necessitated his further stay in Delhi for 10 days more and therefore, he may be allowed leave for 10 days. In case the child of the claimant was really ill and the claimant would not have used such an ambiguous language but would have mentioned straightway that in view of the serious condition of his child he had to bring him to Delhi and get him treated by a private Doctor and that he had applied for 4 days leave and since the child had sufficiently improved further leave for 10 days was required.

Shri Romesh Chander, Partner of the respondent concern has stated in his evidence that no application for 4 days leave was received and the only letter which was received from the claimant was the letter, dated 6th June, 1968, marked Ex. M/1 in which the claimant did not even mention the reason as to why he wanted extension of leave for 10 days. Shri Romesh Chander states that the claimant was informed,—*vide* letter, dated 15th June, 1968, copy Ex. M/2 that he was absent without any leave with effect from 3rd June, 1968 and in his letter, dated 6th June, 1968, no particular reason for extension of leave had been given, therefore, he should report for duty within 24 hours otherwise his services would be dispensed with. In the letter Ex. M/2 it was also brought to the notice of the claimant that the previous record of his attendance was also very poor and that the respondent concern was suffering great loss on this account. This letter was sent to the claimant under postal certificate marked Ex. M/3 and a copy of it was also sent to the Labour-cum-Conciliation Officer. Since the claimant had not given his Delhi address in his letter, dated 6th June, 1968, the management had no other option but to send a reply to him at his village address. Since no further communication was received from the claimant, his name was struck off from the rolls. Under these circumstances the termination of the services of the claimant cannot be held to be unjustified. The claimant is not entitled to any relief.

Dated 16th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2275, dated Faridabad, the 17th May, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 16th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2889-A.S.O.-II-Lab.-69/12612.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Gurgaon District Ex-Servicemen Transport Corporation Society Ltd., Gurgaon.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 31 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S GURGAON DISTRICT EX-SERVICEMEN TRANSPORT CORPORATION SOCIETY LTD., GURGAON

Present.—

Shri C.B. Kaushik, for the workmen.
Shri R.C. Sharma, for the management.

AWARD

The management of M/s Gurgaon District Ex-Servicemen Co-operative Transport Society Ltd., Gurgaon, have terminated the services of Sarvshri Sukh Lal, their Stand Incharge, Shri Ram Saran Singh, Assistant Accountant, and Sarvshri Raghbir Singh and Tek Ram, Conductors. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. 168-SF-III-Lab-67/6488, dated 29th March, 1967:—

Whether the termination of the following workmen is justified and in order? If not, to what relief they are entitled?

- (1) Shri Sukh Lal, Stand Incharge
- (2) Shri Ram Saran Singh, Assistant Accountant.
- (3) Shri Raghbir Singh, Conductor.
- (4) Shri Tek Ram, Conductor.

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri Hans Raj Gupta. However, he relinquished the charge before the issues arising from the pleadings of the parties could be framed. The following four preliminary issues were framed by me on 18th August, 1967:—

1. Whether the reference is vague and this Court has no jurisdiction?
2. Whether the reference of Raghbar Singh claimant is not in order because his name is typed as Raghbir Singh?
3. Whether the dispute has been raised by the workmen very late and as such the reference is not competent?
4. Whether the dispute is an individual dispute and not an industrial dispute and therefore the reference is not in order?

Vide the order of this Court dated 25th August, 1967 these issues were found in favour of the workmen and the following issues were framed on merits.

Regarding Shri Sukh Lal—

1. Whether Shri Sukh Lal was suffering from stomach ache from 11th September, 1966 to 13th September, 1966 and was therefore unable to work during this period?
2. Whether Shri Sukh Lal did not resume duty after 14th September, 1966, and, therefore his services were terminated in accordance with the law on 5th October, 1966?
3. Whether Shri Sukh Lal persisted himself for duty on 14th September, 1966 and he was not permitted to resume his duty? If not to what relief he is entitled?

Regarding Shri Ram Saran Singh—

4. Whether the suspension of Shri Ram Saran Singh was made by duly authorised person?
5. Whether the domestic inquiry is not legal because the appointment of Shri Sitar Singh in place of Shri Ram Singh by Shri Hukam Singh during the course of an inquiry was illegal as Shri Hukam Singh was a party to the dispute and the appointment in such cases was within the powers of the Managing Committee of the society?
6. Whether the termination of the services of Shri Ram Saran Singh was justified and in order? If not to what relief he is entitled?

Regarding Shri Raghbar Singh —

7. Whether the dismissal of Shri Raghbar Singh is illegal on the ground that he was suspended by an officer who was not competent to do so?
8. Whether the termination of his services was justified and in order? If not to what relief he is entitled?

Regarding Tek Ram Conductor—

9. Whether the dismissal of Shri Tek Ram is illegal because he was suspended by unauthorised person?
10. Whether the termination of his services was justified and in order? If not, to what relief he is entitled?

The parties produced their evidence but before the arguments could be heard, the representative of the management raised an objection that the Punjab and Haryana High Court in Civil Writ Petition No. 1575 of 1966 in the case of Haryana Cooperative Transport Society Ltd., Kaithal Vs State of Punjab and others have been pleased to hold that the appointment of my learned predecessor Shri Hans Raj Gupta as Presiding Officer of this Court was not validly made because Shri Gupta did not possess the necessary qualifications laid down under sub-section (3) of Section 7 of the Industrial Disputes Act,—vide the order of this Court dated 4th July, 1968, it was held that the proceedings before Shri Gupta could not be held to be valid because technically Shri Gupta could not even call for the statement of claim or the written statement and so the workmen were given an opportunity to file their statement of claim afresh if they so desired and the management to file their written statement again. The workmen filed their statement of claim and the management filed their written statement and the following issues arose from the pleadings of the parties:—

- (1) Whether the reference is invalid for the reasons given in the preliminary objections.
- (2) Whether the objection that section 2A of the Industrial Disputes Act is ultra vires can be raised in this Court?
- (3) Whether the dispute between the parties is barred under the Punjab Cooperative Societies Act, 1961?
- (4) Whether there is no proper appointment of the present Presiding Officer and for this reason the dispute between the parties cannot be adjudicated upon?
- (5) Whether the reference has lapsed for the reasons given in para 6 of the preliminary objections?

(6) Whether the claimants do not fall within the definition of the workmen as given in the Industrial Disputes Act? If so, what is its effect?

(7) Whether the termination of the service of the following workmen is justified and in order? If not, to what relief they are entitled?

- (1) Shri Sukh Lal, Stand Incharge.
- (2) Shri Ram Saran Singh, Assistant Accountant.
- (3) Shri Raghbir Singh, Conductor.
- (4) Shri Tek Ram, Conductor.

The objections challenging the validity of the constitution of this Court and the appointment of the present Presiding Officer were raised after the parties had produced their evidence on the issues framed previously and no request was made by any party that these objections be decided first that is before dealing the the case on merits. After the issues were re-framed, the parties were given an opportunity to produce their evidence afresh and the case was adjourned for the purpose. On the date fixed for evidence the parties did not produce any evidence. The learned representatives of the parties stated that the statements of the witnesses already produced by them and which were on the record may be read in evidence on the issues as re-framed and that they did not wish to re-call or cross-examine further any of these witnesses.

I have heard the learned representatives of the parties and have gone through the record. My findings are as under:—

Issue No. 1

The reference is said to be invalid on the ground that there is only an individual dispute between the parties but in the order of reference it is mentioned that there is an industrial dispute between the workmen and the management and according to the learned representative of the management this means a collective dispute. The learned representative thinks that by writing the word "workmen" in the order of reference the nature of the dispute or the parties to the dispute are changed. It is urged that in order to raise a dispute with regard to the termination of services two ways are open to the workman aggrieved. The one way is that the dispute is raised by a substantial number of workmen of the establishment and the second way is that the workman aggrieved raises the dispute in his individual capacity by serving an individual demand notice under Section 2-A of the Industrial Disputes Act. It is submitted that the parties are not the same in both cases. According to him the workmen as a body are a party in the first case but in the second case the aggrieved workman alone is a party, and so the order of reference is bad because it recites that there is an industrial dispute between the management and their workmen. It is submitted that if a statute is to be interpreted then a singular can include a plural and vice versa but otherwise it cannot be said that singular would include a plural and vice versa. So according to the learned representative of the management, the Government has changed the parties to the dispute which it cannot do and the Court by treating the dispute under Section 2A of the Industrial Disputes Act is again changing the parties to the dispute which it can not. In support of this submission reliance is placed upon 1958-II-LLJ-752.

I have given my careful consideration to the submissions of the learned representative of the management and in my opinion there is no force in the contention that the order of reference is not correctly worded and the authority cited by him is not applicable to this case. Under the Industrial Disputes Act there is no such thing as an individual dispute or a collective dispute. Only industrial disputes are contemplated. This term is defined in clause (k) of section 2 of the said Act and *inter alia* it means any dispute or difference between the "employers and workmen". Thus we see only plural number used in the definition. Now Section 2A of the Industrial Disputes Act lays down that where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer, connected with or arising out of his discharge, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. Thus by fiction of law even a dispute which is only between one workman and his employer if it relates to the termination of his services would be deemed to be an industrial dispute which means a dispute between workmen and the management. The Government in the order of reference has simply used the expression "industrial dispute" as defined in clause (k) of Section 2 of the Industrial Disputes Act and has not changed the parties nor this Court is changing the parties. Thus there is no force in the submission of the learned representative of the management that the order of reference is not correctly worded and that the parties to the dispute are being changed.

The second ground on which the order of reference is challenged is that the order of reference is vague inasmuch as it does not indicate from which date and in what manner there has been termination of services. Thirdly it is alleged that no notice of demand has been given alleging that the discharge or dismissal including termination was illegal and unjustified and therefore the reference is bad in law.

There is no force in these objections as well. The learned representative of the management has not cited any authority in support of his submission that it is necessary that in the order of reference itself it should be mentioned as to from which date and in what manner there has been termination of service. If the notice of demand on the basis of which conciliation proceedings were initiated was vague inasmuch as it did not indicate on what grounds the workman attacked the legality of the order terminating his services the management could have asked for clarification. It was not done and the management before me have also not shown that they have been prejudiced in my manner. In my opinion therefore the order of reference cannot be struck down on the ground that it is vague.

There is also no force in the objection that the reference is bad because no demand notice was given in which it was alleged by the claimants that they were wrongfully dismissed from service. The claimants did serve a notice of demand on the management in which it was claimed that all the four workmen named in the order of reference be reinstated with full back wages. It is, therefore, not correct to say that no dispute was raised against the alleged wrongful termination of services. I, therefore, find issue No. 1 in favour of the workmen.

Issue No. 2

It is submitted that the object of the Industrial Disputes Act is to maintain industrial peace between the workmen and the management and a dispute between an individual workman and the management is beyond the scope of the Industrial Disputes Act. It is not for this Court to express any opinion on this point. This Court is of a special jurisdiction and has been created under the Industrial Disputes Act. It is not within the jurisdiction of this Court to consider the *vires* of any provision of the Industrial Disputes Act. I, therefore, hold that the objection that Section 2A of the Industrial Disputes Act is *ultra vires* cannot be raised in this Court.

Issue No. 3

It is submitted that under Section 55 of the Punjab Co-operative Societies Act, 1961 this Court is barred from entertaining the present dispute. In support of this submission reliance is placed upon an authority of the Calcutta High Court reported in (1968) 34 FJR 426 Workmens Co-operative Industrial Home Limited *vs.* I-Industrial Tribunal, West Bengal. In this case the services of a workman were terminated and the dispute arising out of termination of the services of the workman was referred for adjudication to the First Industrial Tribunal, West Bengal. After hearing the parties the Tribunal ordered the reinstatement of the workman. The society filed a Writ Petition. It was held that the dispute regarding the termination of the services of the workman was a dispute touching the business of the society and therefore the Industrial Tribunal had no jurisdiction and the Registrar of the Co-operative Societies alone was competent to decide it. A contrary view has however been taken in 1966-I-LLJ-90 which is an authority of the Full Bench of Bombay High Court. In this case it has been held that the disputes contemplated in Section 91 of the Maharashtra Co-operative Societies Act (the wording of which is similar to the wording of Section 55 of the Punjab Co-operative Societies Act) were only those disputes which can be entertained by a Civil Court and are based upon some contract between the parties. It was held that an Industrial Arbitrator unlike a Civil Court is not fettered by the agreement between the parties. He is required to decide the matter not according to the agreement or contract between the parties but according to what having regard to all circumstances he considers to be just and fair. In order that the workers get a proper wage, that they are not victimised or unfairly treated and that their terms of employment generally are such as will secure industrial peace, an industrial arbitrator has the power and the authority to radically modify or alter the agreed terms of employment and to impose new obligations, in a sense he may make a new contract for the parties. The same view has been taken in 1959 Punjab 34. Following the Punjab Authority by which I am bound and the Full Bench Authority of the Bombay High Court I hold that the adjudication of the present dispute by this Court is not barred by section 55 of the Punjab Co-operative Societies Act, 1961.

Issue No. 4

It is submitted that the present Presiding Officer was originally appointed to act as Presiding Officer of the Labour Court at Rohtak but the same appointment was never notified by the Government. Secondly it is submitted that no notification has been issued that the Presiding Officer of the Labour Court at Rohtak has been transferred to preside over the Labour Court at Faridabad nor has he been re-appointed and for these reasons he is not competent to act. There is no force in any of these objections because the appointment of the present Presiding Officer was duly notified by Notification No. 7103-3-Lab-67/25650 dated 24th August, 1967 after he had assumed charge of the office of the Presiding Officer, Labour Court, Rohtak. Since the Labour Court had jurisdiction throughout the State of Haryana no fresh notification of transfer or re-appointment was necessary when the Headquarters of the Court was shifted from Rohtak to Faridabad because there was no change in the jurisdiction of the Presiding Officer. It is, therefore, not correct to say that there is no proper appointment of the present Presiding Officer. I find this issue also against the management.

Issue No. 5

It is submitted that by reason of the amendment of Notification No. 11495/12474-C-Lab-57/11345, dated 7th February, 1958 by which the word "Faridabad" has been substituted for the word "Rohtak" the Labour Court at Rohtak stands abolished and therefore the reference has automatically lapsed. In my opinion there is no force in this objection either. The effect of the amendment of the notification dated 7th February, 1958 referred to above is simply that the Headquarters of the Labour Court which was previously at Rohtak is now at Faridabad from the date the amending Notification was issued. It is incorrect to say that the Labour Court at Rohtak stands abolished and for this reason the reference has lapsed. I find this issue in favour of the workmen.

Issue No. 6

It is submitted that the expression "workman" as defined in clause(s) of Section 2 of the Industrial Disputes Act means only a person who is actually employed in an industry and therefore no industrial dispute can be raised on behalf of a person who is no longer in service. According to the learned representative of the management the protection and safeguards given by the Industrial Disputes Act can be obtained on the demands of only those workmen whose services have not been terminated and a dismissed workman would fall within the definition of a "workman" only if his cause is taken up by the persons actually employed and working in the establishments when the dispute is raised. Thus according to the learned representative of the management a workman who has been dismissed from service and whose cause has not been espoused by the workmen working in the establishment cannot fall within the definition of "workman". In support of this contention reliance is placed upon 1966-I-LLJ-674.

There is no force in this submission of the learned representative and the authority cited in 1966-I-LLJ-674 is also distinguishable. A workman as defined in clause(s) of section 2 of the Industrial Disputes Act means any person employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward and for the purposes of any proceedings under the Industrial Disputes Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute to whose dismissal, discharge or retrenchment has led to that dispute. The claimant, therefore, clearly falls within the definition of the expression "workman" as reproduced above and in view of the provisions of section 2A of the Industrial Disputes Act it is no longer necessary that the cause of the dismissed workmen should be espoused by his Co-workers or their union and obviously the learned representative of the management cannot challenge the *wires* of this provision of law in this Court by unduly stretching the definition of the workman. I find this issue also in favour of the workmen.

Issue No. 7.—The management held domestic enquiries against Sarvshri Tek Ram, Raghbir Singh and Ram Saran Singh claimants before formally dismissing them from service. No enquiry was held against Shri Sukh Lal and he has been dismissed straightaway. The domestic enquiries held against Shri Tek Ram and Raghbir Singh claimants have been formally proved. The record of the domestic enquiry against Shri Ram Saran Singh has also been filed but it has not been formally proved. The management have also led evidence on merits of the charges framed against all the four claimants. The case of each claimant will be discussed separately.

Shri Sukh Lal.—I will first deal with the case of Shri Sukh Lal claimant. As already observed no domestic enquiry was held against him but the management have led evidence to prove that Shri Sukh Lal absented himself from duty and he is not entitled to be reinstated. Briefly stated the facts are Shri Sukh Lal joined the respondent society as a Conductor in the year 1956 and was promoted as Adda Incharge in the year 1959-60 and was getting Rs 144 per mensem. The version of the management is that Shri Sukh Lal was asked to work as a Conductor but he refused and avoided. On 11th September, 1966 he submitted a leave application on the ground of stomachache from 11th September, 1966 to 13th September, 1966 but as the application was not supported by any medical certificate, it was refused and the workman was advised to resume his duty and he was also warned that in case he did not resume duty, action would be taken against him. It is alleged that the claimant did not report for duty and on 5th October, 1966 his name was struck off from the rolls on the ground of continued absence and under these circumstances there was no necessity of issuing any charge sheet or holding any enquiry. It is further alleged that the claimant is employed with M/s Kamal Bus Service Ltd, Delhi as a booking clerk at Gurgaon and there is no ground for his reinstatement.

The version of Shri Sukh Lal on the other hand is that he could not report for duty from 7th September, 1966 to 10th September, 1966 on account of stomachache and he asked for sick leave from 11th September, 1966 to 13th September, 1966 and on 14th September, 1966 he presented himself for duty but no work was given to him although he remained present in the office throughout the day. He says that on the next day, i.e., 15th September, 1966 he again reported for duty but no work was given to him so he made a complaint copy Ex. W.W. 3/2 to the Wage Inspector.

The management in support of their allegations have produced the original leave application, dated 11th September, 1966 which the applicant submitted for leave from 11th September, 1966 to 13th September, 1966 on the ground of stomachache. The noting on this application shows that it was received on 11th September, 1966 at 10 A.M. and it was submitted for orders to the President on 12th September, 1966 and on 16th September, 1966 the President passed an order that the leave was not sanctioned and that the applicant should join immediately and it was also ordered that a notice be issued to him that if he failed to join, action would be taken against him. The applicant was accordingly informed on 16th September, 1966 that his application for leave had not been sanctioned. The record shows that this notice was received by the claimant on 17th September, 1966 and there is a note, dated 26th September, 1966 that the workman concerned was not reporting for duty and was being marked absent. His service was terminated,—*vide* letter, dated 5th October, 1966 which was sent to the claimant under registered cover. The management have also filed a copy of the attendance register marked Ex. M.W. 1/1 in which the claimant is shown continuously absent from 11th September, 1966 to 30th September, 1966. This copy was tendered in evidence by Shri Partap Singh M.W. 1, the present Secretary of the respondent society. He says in his evidence that this attendance register was maintained by Shri Harika Singh the previous Secretary of the Society. No attempt has been made by the management to summon Shri Harika Singh who maintained the attendance register and was incharge of the office. No body else has been produced who was working in the office to contradict the version of the workman affirmed on oath that he reported for duty on 14th September, 1966 and 15th September, 1966 but no work was given to him. Although there is a noting dated 26th September, 1966 purporting to be in the hands of the then Secretary that the claimant was not reporting for duty but no notice was given to him to show cause as to why he was not reporting for duty. The only action which appears to have been taken by the management on this noting is that the services of the claimant were terminated on 5th October, 1966 on the ground that he was absent from duty and was therefore presumed to have abandoned the services.

The learned representative of the management has submitted that in case the claimant was really ill and wanted leave from 11th September, 1966 to 13th September, 1966 on the ground of illness, he should have sent a medical certificate along with his leave application as required by rules framed under the Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave Act, 1965) and since it was not done the management was perfectly justified in not sanctioning the leave. The submission of the learned representative of the management is correct but the question for determination is not whether the management was or was not justified in sanctioning the leave from 11th September, 1966 to 13th September, 1966 because no action is being taken against the workman on account of his absence from 11th September, 1966 to 13th September, 1966. The main question for determination is whether the claimant actually reported for duty on 15th September, 1966 and 16th September, 1966 and no duty was given to him or whether the claimant was continuously absent till 30th September, 1966 as stated by the management and therefore a presumption could reasonably arise that the claimant was no longer interested in remaining in service. On this point as already observed the management have led no evidence. Shri Harika Singh the then Secretary and Incharge of the office was the best person to throw light on this point but for the reason best known to the management Shri Harika Singh was not even summoned as a witness.

It is not the case of management that Shri Harika Singh or any other person who was in those days working in the office was not available and for this reason there was no alternative but to rely upon the entries in the attendance register to which a presumption of correctness should be attached.

As regards the absence of the claimant from 11th September, 1966 to 13th September, 1966, I would have appreciated the stand taken up by the management that the application for leave from 11th September, 1966 to 13th September, 1966, was rightly refused because it was not supported by a medical certificate if the claimant had been informed that his leave application could not be sanctioned because it was not supported by a medical certificate and he should have been called upon to submit a medical certificate. In case the applicant was actually absenting himself from duty as alleged by the management then the management in the ordinary course of business would have also written to the claimant that he was absent from duty without any reason and in case he was interested in continuing his service he should report for duty immediately but no such intimation was given to him. All that the management did was to inform the claimant that his application for leave had been rejected and then they intimated to him that his services stood terminated with effect from 5th October, 1966. Since there is no satisfactory proof that the claimant did not report for duty and the version of the claimant that he did report for duty on 15th September, 1966 and 16th September, 1966, stands unrebutted, I am of the opinion that the termination of the services of Shri Sukh Lal was not justified and in order. There is no evidence that the claimant is at present employed in M/s Kamal Bus Service as alleged in the written statement. It was no reason put to him in cross-examination that he is employed anywhere else. He is therefore entitled to be reinstated with continuity of service and full back wages.

As regards the remaining three claimants that Sarvshri Ram Saran, Raghbar Singh and Tek Ram, their services were terminated after a domestic enquiry was held against each of them separately and the management have also led evidence on the merits of the charges framed against each of them and the question for determination are (1) whether fair and proper enquiries were held against these three claimants and if not whether the management have been able to establish that the claimants were actually guilty of the charges framed against them and therefore the action of the management dismissing them from service was justified and they are not entitled to any relief whatsoever. The case of each claimant will be discussed separately.

Shri Tak Ram.—The practice of the management has been to appoint a committee of enquiry instead of appointing an enquiry officer and committee appointed to enquire into the charges framed against Shri Tek Ram consisted of Sarvshri Hukam Singh, Ram Singh, Kirpa Ram and Amar Singh. Shri Hukam Chand, M.W. 8, has proved the record of this enquiry which is marked Ex. M.W. 8/1.

The record shows that on 2nd November, 1966, Shri Hukam Singh, Ram Singh, members of the committee were not present. Only Shri Kirpa Ram and Amar Singh were present but since the Vice-President Shri Dittar Singh was present; these three persons recorded the statement of the witnesses who had appeared on behalf of the workmen. Shri Amar Singh did not participate in the proceedings of the Enquiry Committee, dated 16th November, 1966, nor did he sign the report submitted by the Enquiry Committee. This report is signed by Shri Hukam Singh and Kirpa Ram only.

Shri Hukam Singh has explained that according to their practice an Enquiry Committee normally consists of three members out of which one member is taken from the union of workmen to represent the cause of the workmen against whom proceedings are held and if one member is absent the remaining two members can continue the proceedings. Shri Hukam Singh, however did not quote any rule under which enquiry committees are constituted by the management nor did he cite any rule under which the enquiry committee can continue its proceedings in the absence of the third member. The learned representative of the management during the course of argument also did not refer to any rule under which the enquiry committee could proceed with the enquiry in the absence of a member of the committee. It is however submitted that normally the opinion of the majority of the members is binding and since the committee consisted of three persons out of whom two took part in the proceedings and held the workman concerned guilty, therefore, the mere fact that Shri Amar Singh did not participate in the proceedings or did not sign the report would not vitiate the findings of the committee. In my opinion there is no force in this submission. The proceedings of an enquiry committee are in the nature of judicial proceedings and the enquiry cannot be held to be valid even if one of its member does not take part in the proceedings. A judicial committee is not a committee of ordinary type which can deliberate upon the agenda and pass resolutions by a majority vote. The Enquiry Committee is supposed to act in a impartial manner and the presence of all the members constituting the committee is essential so that they can give their un-baised opinion on the question as to whether the guilt of the workmen concerned is satisfactorily established by the evidence produced before them. No member of the enquiry committee is expected to take sides and it is not correct to suggest that one of the members of the Enquiry Committee was simply co-opted to safeguard the interests of the workman. A person whose duty is to safe guard the interest of any party is never appointed as a member of the committee. On the contrary he appears before the committee on behalf of his party, produces evidence on behalf of his party and cross-examines the witnesses produced on behalf of the opposite party. If the management thought that one of the members was not participating in the enquiry proceedings without any reasonable cause the management could re-constitute the enquiry committee, but it was not done. Since all the members of the enquiry committee constituted to enquire into the charges framed against Shri Tak Ram, did not fully participate in the proceedings and one of the members did not even take part in the final deliberation, it cannot be held that the report of the enquiry committee is binding on the workman concerned. I am, therefore, of the opinion that the dismissal of Shri Tek Ram, claimant, can not be upheld on the basis of the report of the enquiry committee alone.

The learned representative of the management submitted that no objection was raised on behalf of the workman concerned during the course of the proceedings of the enquiry committee that the proceedings could not be held in the absence of one of members and it is not open to the representative of the workman to raise this objection at this stage. It is also submitted that no prejudice is proved to have been caused to the workman by reason of the non-participation in the proceedings by Shri Amar Singh and for this reason also it is not open to the workman concerned to challenge the validity of the proceedings of the enquiry committee.

I have given my careful consideration to this submission as well and in opinion there is no force in it. The workman concerned was not represented before the enquiry committee by any qualified person and he himself could not be expected to raise such type of legal objections and in my opinion the mean omission on the part of the

workman to raise these objections does not validate the proceedings. I will now deal with the merits of the charge against him.

In the show-cause notice bearing the signatures of the Secretary, dated 22nd October, 1968, the charge against Shri Tek Ram was as under :

(1) During the course of checking the vouchers of the buses it was found that Shri Tek Ram had been negligent in the performance of his duties and had misappropriated the funds of the society as detailed below ?

Serial No.	Rate	Voucher No.	Total as made	Actual total	Difference
1 5th April, 1966	..	23629	Rs 42.33	Rs 43.01	Rs 00.68
2 14th April, 1966	..	24017	87.00	87.70	00.70
3 28th April, 1966	..	24182	27.65	28.00	00.35
4 27th April, 1966	..	24082	59.70	63.00	03.30

In the other show cause notice, dated 17th October, 1966, the charge against this workman was that on 15th October, 1966, he allowed two passengers to travel from Rewari to Beranghi/Barawas to Beranghi without issuing the ticket to them although he had charged the fare from them and he also did not issue a ticket for the cycle which one of the passengers was carrying and in this manner misappropriated the passengers fare and the passenger tax. In the third show-cause notice, dated 31st March, 1966, the charge against the workman concerned was that on 28th March, 1966, bus No. PNG-2495 which was going from Odel was checked at the Palwal Octroi post and it was found that he had charged the fare from the passengers but had not issued them the necessary tickets.

The previous conduct of the workman is also said to be extremely bad. The details of the previous misconduct of the claimant are given in the written statement in para No. 4 of the reply on merits of the written statement, dated 17th July, 1968. The action taken against the workman is also detailed therein. It is pleaded that the charges now framed against the workmen were also proved during the course of domestic enquiry held against him and therefore he has been rightly dismissed. It is further pleaded that the workman is also employed in any one company and therefore he cannot claim the relief of reinstatement.

The management have produced evidence on merits of all the charges framed against this workman. I have gone through the evidence and in my opinion the evidence produced by the management does not establish any of the charges framed against the workman.

As regards the charge of carrying three passengers without ticket on 28th March, 1966, Shri Partap Singh M.W. 1, Secretary of the respondent society has stated that on 28th March, 1966, he along with Shri Sher Singh Conductor checked the Bus No. PNG-2495 and it was found that there were three passengers travelling without tickets from Mitrol to Palwal and that Shri Tek Ram, Conductor, had already collected the fare from them. Shri Partap Singh stated that Shri Sher Singh issued the tickets and a report Exhibit M.W.1/1 was made. In cross-examination the witness admitted that he was not a regular checker but was only incharge of the workshop. Shri Sher Singh, M.W. 2, corroborates the testimony of Shri Partap Singh in the examination-in-chief but in answer to the Court question admitted that the bus was over-loaded and the conductor was issuing the tickets when they entered the bus for the purpose of checking and he could not issue any more tickets because the ticket book was taken from him. He however maintained that in case Shri Tek Ram wanted to issue the tickets he could have done so earlier but admitted that the checker did enquire from Shri Tek Ram as to why the tickets had not been issued to the three passengers and Shri Tek Ram explained that because of the rush he could not issue the tickets. Although the witness however affirmed that the complaint, Exhibit M.W.1, was attested by him but in cross-examination stated that it was not correctly recorded in the complaint that the conductor had already taken the fare from the three passengers from Mitrol. The witness says that the fare from these passengers was taken in their presence and he was asked to attest the report simply because the tickets were got issued through him. Thus we find that the evidence of Shri Sher Singh M.W. 2 rather supports the version of the conductor that the bus was over-loaded by reason of the rush of passengers and he was issuing the tickets when the bus was checked and he had not already received the fare from the passengers as alleged and it cannot therefore be said that Shri Tek Ram had any intention to take any passengers without issuing the necessary tickets to them.

As regards the charge of carrying two passengers and one cycle without ticket, the management have produced two witnesses, Shri Jugti Ram, M.W. 5 and Lekhi Ram M.W. 3. The evidence of Shri Jugti Ram states that on 15th October, 1966, he gave ticket to all the passengers who got into the bus No. PNG-2944 and Shri Tek Ram was the conductor of that bus.

Shri Lekhi Ram, M.W. 3, has stated that on 15th October, 1966 he checked Bus No. PNG-2944 along with Shri Parmar Singh near Beranghi and found that there were two passengers travelling without ticket out of whom one was from Rewari to Beranghi and other was from Barawas to Beranghi and it was also found that a passenger was taking a cycle from Rewari to Kandhara without obtaining any ticket and that the conductor Shri Tek Ram had already charged the fare from both passengers and had also taken the fare for the cycle but had not issued any ticket for the same. The witness stated that he issued three tickets marked Exhibit M.W. 3/1 to M.W. 3/3 and made entry in the voucher and also made a report Exhibit M.W. 3/4 which is in Urdu. The evidence of this witness does not help the management because he admits in cross-examination that he could not even read this

report although it bears his signatures. The witness says that he got his report written from some body else and does not recollect the name of the person who actually wrote this report. He says that he could not even say whether he knew this person previously. The witness is admittedly not illiterate and he has not been able to give any reason as to why he did not write the report against Shri Tek Ram with his own hand although the other reports were written by him. The date on this report was obtained from the witness is also not written by him with his own hand. The witness has stated that he does not orally remember the date on which he signed this report. Sarvshri Parmar Singh M.W. 4 and Shri Tulsi Ram M.W. 6 have been produced to corroborate the evidence of Shri Lekhi Ram. The evidence of these witnesses is also very unsatisfactory. Shri Tulsi Ram is the driver of the bus and obviously it could not be within his knowledge as to the persons from whom the conductor had recovered the fare because the attention of the driver is always towards the road when he is driving the bus yet the witness says that the conductor had recovered the fare from the passengers who were found without tickets. It appears that the witness is out to support the management because he once left the service of the respondent society and was taken back in service only about 4 months back before the bus was checked by Shri Lekhi Ram and Parmar Singh.

As regards Shri Parmar Singh he too says that the conductor had already recovered the fare from the passengers as also from the person who was carrying the cycle although the fare were not paid by the passengers concerned in his presence and the witness had no basis for making this statement. More over the witness admits in cross examination that Shri Lekhi Ram did not write the report in his presence.

The claimant Shri Tek Ram in his evidence has explained that the charge that he had not issued the tickets to the two passengers and one cycle is wrong and that the correct position was that Shri Jugti Ram M.W. 5 was in those days incharge of the Adda and it was also his duty to check the bus on route. The claimant stated that a hawker was engaged who was being paid 20 paise by the Adda incharge per bus and that Shri Jugti Ram had received the fare of the cycle which had been put on the bus and gave the money to the hawker. As regards the two persons travelling without ticket, the claimant explained that one of them was stated to be a checker of passenger buses of Rajasthan, and Shri Jugti Ram told him that this passenger was to be taken free of charge and so he neither charged any fare or did he issue any ticket to that person. As regards the other ticket the claimant explained that Shri Jugti Ram issued another ticket simply because he considered that ticket No. 37058 issued by him was not very clear because the carbon paper had slipped from its place. The claimant has stated that he did explain to Shri Lekhi Ram that the ticket in question was not for two passengers because if it had been so then it would have been for 50 paise but the ticket in question was only for 40 paise and that the bus fare from Barawas to Beranghi is only 25 paise and the ticket in question was from Rewari to Beranghi. The claimant says that when Sarvshri Lekhi Ram and Parmar got into the bus he told them to count the passengers and at that time there was only 16½ passengers and tickets for 15½ passengers had been entered with his own hand in the voucher and there was only one person namely the checker of the Rajasthan bus who was without ticket. In my opinion the version of Shri Tek Ram Conductor appears to be correct. At any rate, there is no satisfactory evidence that the conductor had charged the fare from the passenger in question.

As regards the vouchers the claimant has explained that he had not mis-appropriated any amount. He has stated that in a hurry sometimes mistakes do occur while totalling and the cashier also checks the totals and if there is any excess he returns the amount and if there is any shortage the amount is made up. The claimant has stated that the amount detailed in the charge-sheet which is said to have been mis-appropriated by him is nothing but clerical mistakes while totalling and it is only for this reason that from 27th April, 1966 to 22nd October, 1966 he was not given any charge-sheet for not depositing the small amounts mentioned in the charge-sheet. The claimant stated that in reply to the charge-sheet he did submit that he should be shown the relevant vouchers but the vouchers in question were not shown to him. The management have not led any evidence to prove that the witness intentionally deposited less amount and has mis-appropriated the same. Thus none of the charges have been established against this workman and he is entitled to be reinstated with continuity of service and full back wages.

Shri Ram Saran Singh.—

Shri Ram Saran Singh claimant was working as an accountant in the respondent society since 7th March, 1960. His case is that during the period of his service there never was any complaint of mis-conduct or mis-behaviour against him previously and his services have been terminated malafide because the management wanted to bring in their own men. The version of the management is that the claimant was charge-sheeted for neglect of duty on 12th February, 1966 but he was let off on the assurance that he would improve himself. He did not improve and he was charge-sheeted again on 7th October, 1966 because Shri Hukam Singh Director while checking his work found that he was neglecting his work and was acting in direct contravention of the rules and regulations of the society and had mis-handled and mis-managed the property and the cash of the society. The management have not formally proved the domestic enquiry held against this workman but the record of the enquiry has been filed. Shri Amar Singh one of the members of the inquiry committee did not participate in the proceedings and for the reason given while discussing the case of Shri Tek Ram I am of the opinion that it is not possible to uphold the validity of the domestic enquiry held against this workman also.

As regards the merits of the case, the particular allegations against the workman are as under :—

- (1) The cash book was not posted up to date and the entries were posted up to 24th September, 1966. From this the management presumed that the claimant was negligent and inefficient and his intention was to manipulate the accounts in an undesirable manner.
- (2) Some of the entries in the ledgers, had been posted only up to July, 1966 and generally the ledger had not been posted at all after 30th August, 1966.
- (3) The accounts pertaining to the financiers when checked on 30th September, 1966, were found to hopelessly incomplete.
- (4) The claimant in collaboration and collusion with the Land lord and with an ulterior motive had raised the rent of the office building from Rs 30 per mensem which was the sanctioned rent to Rs 50 per mensem with effect from 5th December, 1959 and this action on his part caused serious loss to the society and it tantamounted to defalcation and breach of trust on his part.

(5) The claimant failed to check the incoming vouchers relating to the income of the society from day to day and he never checked the totals submitted by the conductors with the result that the society was put to serious loss every day. It is alleged that the vouchers showed larger income while the claimant deliberately entered lesser sums in the accounts books of the society and misappropriated various sums.

The cash pertaining to the following vouchers were shown to have been incorrectly entered.

Voucher No.	Date	Amount	Amount actually entered	Difference
1. 23496	.. 11th April, 1966	69.17	66.07	3.10
2. 23497-98	.. Nil	73.27	71.27	2.00
3. 23629	.. Nil	43.01	42.33	0.68

6. On 28th September, 1966, Shri Ram Singh, Director required the claimant to show him the accounts but in order to conceal his defaults and lapses he refused to show him the accounts and his behaviour was rude.

In reply to the charge-sheet the claimant submitted a detailed reply, dated 11th October, 1966 in which he questioned the bonafides of the management and stated that the management wanted to get rid of him in order to appoint their close relations. Some concrete instances of such favouritism were given. The management have not denied the factum of said appointments or the relationship as mentioned. As regards the merits of the charges framed against him the claimant submitted that he was not working simply as an accountant but in addition he was doing the work of a clerk and typist as well i.e. in addition to writing cash book and posting the ledgers etc. he was required to draft letters, show-cause notices and the charge-sheet etc. He submitted that on or about 22nd August, 1963 he had to prepare documents for the purpose of Income Tax and it took him three or four days and later on he had to prepare a statement of E.P.F. contribution, he had to prepare the shares of the society and he spent about two days for doing this work. He pointed out that in July and August he could not avail of even four rests and so he applied for grant of wages in lieu thereof but he was not allowed wages and was asked to avail the rests. The claimant stated that he fell sick and applied for three days leave with effect from 31st August, 1966 but even this leave was granted to him without pay. The claimant further stated that in the month of September he was again required to prepare the income tax cases and it took him two or three days and in the meantime the statement of E.P.F. contributions were received back and he had to reconcile the figures. The claimant has further pointed out that at the close of every month and the beginning of the following month, he had to spend five to seven days in compiling the accounts, preparing balance sheets and he was not given any helper for this work. He has stated that there was only one clerk to handle all the work in the society and when ever he proceeded on leave the work naturally went in arrears and so it was beyond his capacity to bring it up to date and this fact was known to the Secretary as well as members of the Managing Board. In short the plea taken up by the claimant is that he always remained over worked and had made representations a number of times but no attention was given to his representation. He has stated that at the time the charge-sheet was given to him he was on medical leave.

As regards the charge of unauthorised increase in rent the claimant denied that he was responsible for raising the rent of the office building from Rs 30 per mensem to Rs 50 per mensem. He alleged that this was done by the Secretary or the Manager and by the then Managing Board.

As regards the checking of vouchers, the claimant pleaded that this work was never given to him because he could never get time for this purpose and the Secretary and the Manager as also the members of the Managing Board were aware of it. The claimant stated that sometime the cashier was advised to check the voucher and some times the conductors were separately deputed for the purpose. He stated that according to the practice conductors come straight to the cashier and hand over the vouchers and cash to him and it is the job of the cashier to check the vouchers and enter the accounts in his rough book and then in his cash book and the claimant completed his cash book afterwards. As regards the charge of misappropriation the claimant stated that he never handed any cash and that he had no connection with any dealer because all the sales and purchases were made by the incharge workshop, Secretary or the Director of the Managing Board.

As regards the charge that the accounts pertaining to the financiers were hopelessly incomplete, the claimant stated that mostly the agreements were not brought with the amount from the financiers and the claimant was only informed of the amount received from the financier and he opened the accounts. Their wages were many a times adjusted at the time of the clearance of their accounts.

The claimant also denied the allegation that he had refused to show the accounts books to Shri Ram Singh, Director. He stated that Sh. Ram Singh had a special grudge against him because he had taken away some share transfer deeds from him and had refused to return the same to him.

The members of the Enquiry Committee recorded the statement of Shri Ram Singh in support of the charges framed against the claimant and themselves did some checking of the accounts books and relying upon the resolution of the Executive Committee, dated 26th May, 1962 in which the duties of the accountant are detailed came to the conclusion that all the charges framed against the claimant were established. I have gone through the record of the Enquiry Committee and apart from the objection that two members of the Committee could not function in the absence of the third members. I am of the opinion that the findings of the committee are

perverse. Shri Ram Singh simply stated before the committee that he checked the cash book on 6th October, 1966 and found that the entries were posted only up to 24th September, 1966 where as they should have been written daily. He said that the entries in the ledger were posted only up to 30th August, 1966 and at some places there were no entries after July, 1966. He further stated that the claimant raised the rent of the office building from Rs 30 P.M. to Rs. 50 P.M. with effect from 5th December, 1959 and in this manner the society had suffered a loss of Rs. 1,680 and that there was no resolution of the society sanctioning the increase in the rent and this was done by the claimant for his personal benefit. He also stated that he had checked vouchers with the ticket books and in every voucher, he found that the income had been shown less. According to him it was the duty of the accountant to daily check the ticket books with the vouchers but he had not performed this duty from the last two years and in this manner he had caused loss to the society. The witness then referred to vouchers No. 23466, dated 11th April, 1966, Nos. 23497, 23498 and 23629 and gave the details of the amounts which had been entered loss and the total amount which had not been entered was found to be Rs 5.78.

As already observed the Enquiry Committee had only the statement of Shri Hukam Singh before them and they did some physical checking of the account books. The Committee did not even apply its mind on the question whether the defence raised by the claimant had any substance and whether he could physically perform all the work which he was required to do. No enquiry was made as to whether the claimant was doing the work of a clerk and typist or whether he prepared the documents for purpose of income tax. The claimant has been held guilty of dishonesty and misappropriation although there was no evidence before the Committee that the claimant had misappropriated even a single pie. The committee also did not take note of the fact that the so called unauthorised increased rent for the office building was being paid from the year 1959 and after the lapse of six years it came to the notice of the management that the claimant alone was responsible for this unauthorised increase and although there was no evidence before the committee except the bald statement of Sh. Hukam Singh that the claimant had increased the rent in collusion with the landlord yet the Committee blindly dittoed the version of the witness and held the claimant guilty of collusion and dishonesty.

Thus we find that there was no evidence worth the name before the Enquiry Committee in support of the charges framed against the claimant and the conclusion of the Committee that the claimant was guilty of all the charges framed against him can only be characterised as perverse. The only witness who appeared on behalf of the management namely Shri Hukam Singh was not even cross-examined although he made a number of accusations against the claimant which were not admitted by him. This shows that probably the claimant did not ever know that he had a right to cross-examine the witness. The workman had specifically stated in his written statement that he was busy preparing the income tax case or statements relating to the E.P.F. contribution. No attempt was made by the committee to find out whether the workman was in fact busy in the work as stated by him. The committee has given no finding that the claimant was not performing any other work as stated by him and therefore there was no justification for his work to go in arrears. In short there is no finding of the committee with regard to the main defence raised by the claimant that he was over worked. It is therefore, obvious that no attempt has been made by the Enquiry Committee to do justice and therefore even if it be held that the proceedings of the Enquiry Committee were not vitiated because one of its members did not participate in the enquiry still it would not be possible to up-hold the dismissal of the claimant on the basis of such a perverse report of the Committee.

In court also the management have led equally worthless evidence to prove the guilt of the claimant. Shri Ram Singh a Director of the respondent society has been examined as M.W. 7. He has stated that on 28th January, 1966 he asked the claimant Shri Ram Saran Singh to show him the cash book and the ledger but he refused to show the same to him. Shri Ram Singh has stated that there was a general meeting of the members of the society on 23rd January, 1966 and some share-holders had transferred their shares and he wanted to see whether the transfer has been entered in the ledger, etc. Shri Ram Singh has not stated any thing else in the examination-in-chief with regard to the other allegations made against the claimant. In cross-examination the witness admitted that he had checked the account books in the first week of January, 1968 and he found the entries had been correctly made.

Shri Hukam Singh, President of the respondent society who has been examined as M.W. 8 has stated that on 30th September, 1966 he checked the cash book and it was found complete only up to 24th September, 1966 and so he made a note that the cash book was not complete and this was very bad on the part of accountant and he should explain his position. Shri Hukam Singh further stated that on 6th October, 1966 he checked the ledger and found that the entries had been made in the register only up to 31st August, 1966 although it was one of the duties of the accountant to make daily entries and it was also his duty to compare daily the ticket book with the vouchers and sign his name and the claimant had duly noted the duties which are detailed in Ex. M.W.8/3. In cross examination however the witness admitted that they had no typist and the accountant also did the type work. He, however, added that the claimant did not do any other work except that which was entrusted to him and is detailed in Ex. M.W.8/3. The claimant in his evidence has given in detail the work which he was doing in addition to his duties as an accountant. He has stated that the financial year of the respondent society closes on 30th June and in the month of July he had to prepare profit and loss account as also the balance sheet. He has stated that this is a voluminous work and it takes at least ten days to complete it and in addition he was on leave for five days. The claimant also stated that a representative of the society had to appear before the Income Tax Officer and it took him three or four days to search out the necessary details of the accounts and in addition Provident Fund statement had to be submitted and it took him three to four days to prepare the statement and side by side he had to perform other general duties and as he was over worked and up-to date entries in the cash book could not be maintained. In my opinion the stand taken up by the claimant that he was over worked appears to be correct and he can not be held responsible for not keeping the accounts up to date if he was not given time for the same.

Shri Ram Singh has stated that the building in which the office of the society is situated had been taken on rent on Rs 30 P.M. but the claimant without any authority from the Managing Committee and in collusion with the land lord himself increased the rent to Rs 50 P.M. and paid the arrears of the rent at this rate. The claimant has explained that previously the society had only two rooms in its occupation but third room was taken on rent and the Managing Committee passed a resolution No. 5, dated 19th December, 1960 authorising the payment of enhanced rent and all the bills for enhance rent were approved by the Secretary and the President of the Society and the payments were made by the cashier and he had no concern with it. The claimant asserted that the minute book containing the resolution No. 5 of 1960 is in the possession of the society.

As regards the now checking of the vouchers the claimant has explained that the practice is that when the conductor comes from the bus after doing his duty he goes to the office directly where he hands over the cash to the cashier together with the vouchers and the cashier then tallies the cash with the vouchers and makes the entries in the cash book and the accountant does not come into the picture at all. If this version had not been correct, the management could have easily confronted the witness with the voucher previously checked by him. The claimant has not even been cross-examined at all with regard to this plea taken by him.

The claimant also denied the allegations that he ever refused to show the cash book to Shri Ram Singh or any other Director. The fact that the relations between the claimant and Shri Ram Singh were strained is apparent. The claimant has stated that Shri Ram Singh asked him to show him certain transfer deeds and when the deeds in question were given to him he refused to return the same and so he made a complaint to this effect to the President of the society as also to an officer of the Cooperative Societies Department. This part of the statement of the claimant has also not been challenged in cross-examination. Under these circumstances it would not be safe to reply upon the mere word of mouth of Shri Ram Singh that the claimant refused to show him the accounts books. In my opinion the evidence produced by the management in Court is not sufficient to substantiate any of the charges framed against the claimant and the termination of the services of the claimant were not justified and in order. He is also entitled to be reinstated with continuity of service and full back wages.

Shri Raghbar Singh.—Shri Hukam Singh M.W. 8 has proved the domestic enquiry held against this workman and it marked Ex. M.W. 8/2. As regards the merits of the case the charge as framed against Shri Raghbar Singh is that he was guilty of an act prejudicial to good order and society discipline because on 20th February, 1966 while proceeding from Gurgaon to Farrukh Nagar, he defrauded the society of the passenger fare and the Government of their passenger tax because he did not issue tickets to ten passengers although he had collectd. Rs 6 from them on account of fare and Rs 1.50 on account of passenger tax. This charge was framed on the basis of the report of Shri Lekhi Ram Checker. The second charge against Shri Raghbar Singh is that he failed to issue tickets to the passengers within a distance of three miles according to the order of the Punjab Government. On those charges an enquiry was held by a Committee consisting of Sarvshri Hukam Singh, Datar Singh and Amar Singh and the record of the enquiry is marked Ex. M.W. 8/2. It is proved by the evidence of Shri Hukam Singh M.W. 8. The committee by majority found the workman guilty of the charges framed against him but obviously the findings of the committee are perverse. The only evidence produced by the management before the committee was that of Shri Lekhi Ram checker and Shri Partap Singh. Shri Lekhi Ram stated before the Enquiry Committee that when he checked the bus which was going from Gurgaon to Farrukh Nagar it was found that there were 15½ passengers to whom tickets had not been issued although fare had been collected from as many as 10 passengers. The two Directors of the respondent society were admittedly sitting in the bus at that time. The workmen concerned examined them in his defence and they supported the testimony of Shri Lekhi Ram. In my opinion the only fact proved before the Committee was that as the bus was moving from Gurgaon to Furrah Nagar the conductor was issuing the tickets but he was not able to issue the tickets to all the passengers although he had collected the fare from 10 passengers, when Sh. Lekhi Ram checker entered and checked the bus near Basai Bus stop. On merits also the evidence produced in this Court on behalf of the management is to the same fact. No evidence was produced in this Court nor before the enquiry committee that the circumstances of the case shows that the conductor did not even intend to issue tickets to the passengers from whom he had already collected the fare and that he intended that the remaining passengers should travel free and for this reason he neither issued them any ticket nor did he intend to issue them any ticket and he was just sitting at his seat. The learned representative of the workman has rightly pointed out that there was no evidence before the enquiry committee nor any evidence has been produced in this Court that the claimant mis-appropriated any money or he had any intention to do so. It has also been rightly pointed out that the conductor could not have dared to carry any passengers without ticket and mis-appropriate the fare when two Directors of the company were sitting in the bus. The explanation given by the Conductor is that when the bus left the General Bus Stand Gurgaon at 2-30 P.M. there were 27 or 28 passengers but it became full by the time it reached the office of the respondent society. He says that when the Driver started the bus he rang the bell and asked him to stop because by then he had not been able to issue the tickets to all the passengers but Shri Ram Singh Director told him that he was in the bus and he should have no fear on this account and he should not delay the bus. The explanation given by the Conductor may or may not be correct but this fact is clear that two Directors of the society were sitting in the bus and by no stretch of imagination it can be presumed that the conductor defrauded the society or intended to do so. The finding of the Inquiry Committee to this effect is perverse and the evidence produced by the management in this Court in order to prove this charge is also not sufficient.

As regards the second charge the representative of the management has not cited the rule which require that the tickets must be issued within a distance of three miles and it has also not been proved what distance the bus had actually travelled when it was checked. It has also not been proved what is the penalty for the breach of rule requiring the tickets to be issued to the passengers within a distance of three miles and to what extend the conductor of the bus must be held responsible especially when the Directors of the Society were travelling by the same bus. The management have also led evidence to prove another, misconduct of this claimant which was not included in the charge sheet framed against him. Shri Partap Singh M.W. 1 Secretary of the respondent society has stated that on 22nd February, 1966 he checked Bus No. PNG-2944 which was going from village Bharawas to Rewari and that Shri Raghbar Singh was the conductor. The witness has stated that there was one passenger travelling without ticket from Tauru to Sarai although fare had been charged from him. In cross examination the witness stated that he did not recollect whether he made any written report against the conductor. He further stated that Shri Raghbar Singh issued the ticket to the passenger whom he had detected travelling without ticket. It was suggested to him that he did not do any actual checking and had made a false report against Shri Raghbar Singh because the management wanted to victimise him. The witness admitted that he is the brother of the President of the respondent society. No charge was framed against Shri Raghbar Singh for allowing a passenger to travel without ticket from Tauru to Sarai after he had charged fare from him but still this witness was examined by the enquiry committee. To this extent the proceedings of the committee must be held to be vitiated. In the written statement filed in this Court it has not been pleaded on behalf of the management that Shri Raghbar Singh conductor was guilty of allowing one passenger to travel without ticket from Tauru to Sarai but still Shri Partap Singh has been examined in this Court also to prove this alleged mis-conduct. Since this alleged misconduct was not pleaded in the written statement it is not possible to take any notice of it.

In the written statement another plea taken against Shri Raghbar Singh conductor is that on 25th February, 1966 Shri Parmar Singh checker made a report that the conductor had not fixed P.T.T. stamps on the passenger tickets. Shri Parmar Singh has been examined in this Court as M.W.4 but no question was put to him on this point. It can not therefore be said that the claimant was guilty of not fixing P.T.T. stamps on the passenger tickets. Thus we find that the management have failed to prove that Shri Raghbar Singh conductor was guilty of any of the offences of which he was charged or that he does not deserve to be reinstated.

As regards the plea that the claimant has accepted the amount due to him from the respondent society without protest the learned representative of the management has not cited any authority in support of the contention that the workman has lost his right of reinstatement because he accepted the amount which was then due to him without protest. It is not the case of the management that any thing extra money was paid to the workman in consideration of his relinquishing the right as reinstatement which he possessed by reason of wrongful termination of his services. In my opinion therefore the claimant is entitled to be reinstated with continuity of service and full back wages.

Dated 9th May, 1969.

No. 2217, dated the 12th May, 1969

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated 9th May, 1969.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2881-A.S.O.-II-Lab-69/12614.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Suraj Kund Mining and Machinery Company (P) Ltd., Badarpur.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 14 of 1968
between

THE WORKMEN AND THE MANAGEMENT OF M/s SURAJ KUND MINING AND MACHINERY COMPANY (P) LTD., BADARPUR

Present :—

Shri Ashok Kumar, for the workmen.
Shri R.C. Sharma, for the management.

AWARD

The workmen of M/s Suraj Kund Mining and Machinery Company (P) Ltd., Lakarpur, Post Office Badarpur, complained that the management had illegally locked out their workmen and this illegal lock-out started from 3rd September (afternoon) it was prayed that the lock-out be lifted immediately and the workmen allowed to resume their respective duties and be compensated fully with back wages from 3rd December, 1967 (afternoon) till resumption of duties with continuity of service. On this demand the following reference was made by the Government to this Court for adjudication,—*vide* Gazette notification No. ID/FD/350A/2498, dated 27th January, 1968 :—

Whether the lock-out declared by the management from 3rd December, 1967 is justified and in order.

If not to what relief the workers are entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. A number of preliminary objections were raised on behalf of the management. The objection that this Court was not properly constituted and the appointment of the present Presiding Officer was not valid was decided,—*vide* the order of this court, dated 3rd February, 1969. As regards the other preliminary objections raised on behalf of the management and the pleas taken on merits, it is necessary to give any finding because the plea taken up by the management is that the services of the workmen concerned have since been terminated and the question with regard to the validity of the termination of the service has not been referred to this Court. The learned representative of the management has stated that the case of the workmen as given in the demand notice was that the management started illegal lock-out with effect from the afternoon of 3rd December, 1967 and their demand was that the lockout be lifted immediately and the workmen allowed to resume their respective duties and be compensated fully with back wages till resumption of duty with continuity of service. The representative of the workmen has further stated that the management did not attend the office of the Labour Inspector nor did they appear before the Conciliation Officer and the stand now taken up by the management in their written statement that they had terminated the services of the workmen was never taken up previously nor did the workmen receive any intimation that their services stood terminated. It is alleged that the so called termination of the services of the workmen is wrongful, but this plea would not be covered by the order of reference made to this Court, and it would not be opened for this Court to grant any relief to the workmen in these proceedings. It is further stated that the Court also did not frame any issue on this point and this question has arisen only during the course of arguments, therefore, the workmen should be given an opportunity to raise their demand afresh so that they can claim relief with regard to their alleged wrongful termination of their services.

In view of the statement given by the learned representative of the workmen I hold that the claimant are not entitled to any relief in these proceedings. I give my award accordingly. No order as to costs.

Dated the 12th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2234, dated 14th May, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 12th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2886-A.S.O.II-Lab-69/12616.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Gurgaon District Ex-Servicemen Cooperative Transport Society Ltd., Gurgaon :—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 42 of 1967

between

SHRI BRIHMA NAND DRIVER AND THE MANAGEMENT OF M/S GURGAON DISTRICT EX-SERVICEMEN COOPERATIVE TRANSPORT SOCIETY LTD., GURGAON

Present.—

Shri C.B. Kaushik, for the workman.

Shri R.C. Sharma, for the management.

AWARD

Shri Brihma Nand Driver was in the service of M/s Gurgaon District Ex-Servicemen Cooperative Transport Society Ltd., Gurgaon. His services were terminated on account of certain mis-conducts said to have been committed by him and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. 196-SF-III-Lab-67/11503, dated 5th May, 1967 :—

Whether the termination of services of Shri Brihma Nand, Driver, is justified and in order ? If not, to what relief he is entitled ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri Hans Raj Gupta. A statement of claim was filed on behalf of the workmen and the management filed their written statement. Before Shri Gupta could frame the issues he relinquished charge and the following four preliminary issues were framed by me on 18th August, 1967 :—

- (1) Whether the reference is vague ?
- (2) Whether the terms of reference do not fall within the subject matter of second schedule of the Industrial Disputes Act, 1947, and so this Court has no jurisdiction ?
- (3) Whether the reference is null and void because:
 - (a) the Government have not indicated how an industrial dispute is apprehended ?
 - (b) the Government have not indicated that the dispute affects less than 100 workers ?
- (4) Whether the grounds of claim have been changed because in the demand notice it is alleged that the services of the claimant have been wrongfully terminated and in the statement of claim it is alleged that his dismissal is wrong and if so, what is its effect ?

Vide the order of this Court, dated 25th August, 1967, the preliminary issues were found in favour of the workman and the following issues on merits were framed :—

- (1) Whether the claimant has been dismissed as a result of proper domestic enquiry held against him ?
- (2) Whether the society itself is bogus and has not been framed under the laws meant for the society and hence all actions taken by the Managing Committee, Sub-Committee or any other officer of this society are illegal ?
- (3) Whether the claimant has been victimised due to personal enmity ?
- (4) Whether the claimant has become unfit to perform his duty as Driver ?
- (5) Whether the claimant was guilty of the charges levelled against him and the termination of his services is justified and in order ? If not, to what relief is he entitled ?

The following issue was added on 17th October, 1967 :—

Whether the validity of the dismissal of the claimant cannot be adjudicated in these proceedings because in the demand notice on the basis of which the dispute has been referred to this Court it is alleged that the termination of services of the claimant was illegal being in contravention of section 25F of the Industrial Disputes Act, 1947 ?

The parties produced their evidence in support of their respective contention but before the arguments could be heard, the representative of the management raised an objection that the Punjab and Haryana High Court in Civil Writ Petition No. 1575 of 1966 in the case Haryana Cooperative Transport Society Ltd., Kaithal *versus* State of Punjab and others has been pleased to hold that the appointment of my learned predecessor Shri Hans Raj Gupta as Presiding Officer of this Court was not validly made because Shri Gupta did not possess the necessary qualifications laid down under sub-section (3) of Section 7 of the Industrial Disputes Act, —*vide* the order of this Court, dated 4th July, 1968 it was held that the proceedings before Shri Gupta could not be held to be valid. Technically Shri Gupta could not even call for the statement of claim or the written statement and so the workman was given an opportunity to file his statement of claim afresh and the management was also given opportunity to file their written statement again if they so desired. The workman filed his statement of claim and the management filed their written statement. The following issues arise from the pleadings which the parties filed afresh :—

- (1) Whether the reference is invalid for the reasons given in the preliminary objections ?
- (2) Whether the objection that section 2-A of the Industrial Disputes Act is *ultra vires* can be raised in this Court ?
- (3) Whether the dispute between the parties is barred under the Punjab Cooperative Societies Act, 1961 ?
- (4) Whether there is no proper appointment of present Presiding Officer and for this reason the dispute between the parties can not be adjudicated upon ?
- (5) Whether the reference has lapsed for the reasons given in para 6 of the preliminary objections ?
- (6) Whether the claimant does not fall within the definition of the workman as given in the Industrial Disputes Act; if so, what is its effect ?
- (7) Whether the termination of the services of Shri Brihma Nand is justified and in order ? If not, to what relief he is entitled ?
- (8) Whether the ground of claim has been changed ? If so, what is its effect ?

The objection challenging the validity of the Constitution of this Court and the appointment of the present Presiding Officer were raised after the parties had produced their evidence on the issues framed previously and no request was made by any party that these objections be decided first i.e. before deciding the case on merits. After the issues were reframed the parties were given an opportunity to produce their evidence afresh but the parties did not avail of this opportunity. The learned representative of the parties stated that the statements of the witnesses already produced by them and which were on the file may be read in evidence on the issues as re-framed and that they did not wish to re-call or cross examine further any of these witnesses.

I have heard the learned representative of the parties and have gone through the records. My findings are as under :—

Issue No. 1.—The reference is said to be invalid on the ground that there is only an individual dispute between the workman Shri Brihma Nand and the management but Government in the order of reference have mentioned that there is an industrial dispute between the workmen and the management and according to the learned representative of the management this means a collective dispute. The learned representative thinks that by writing the word 'workmen' in the order of reference the nature of the dispute or the parties to the dispute are changed. It is urged that in order to raise a dispute with regard to the termination of services two ways are open to the workman aggrieved. The one way is that the dispute is raised by a substantial number of workmen of the establishment and the second way is that the workman aggrieved raises the dispute in his individual capacity by serving an individual demand notice under section 2A of the Industrial Disputes Act. It is submitted that the parties are not the same in both cases. According to him the workmen as a body are a party in the first case but in the second case the aggrieved workman alone is a party and so the order of reference is bad because it recites that there is an industrial dispute between the management and the workmen. It is submitted that if a statute is to be interpreted then a singular can include a plural and *vice versa* but otherwise it cannot be said that singular would include a plural and *vice versa*. So according to the learned representative of the management, the Government has changed the parties to the dispute which it can not do and the Court by treating the dispute under section 2A of the Industrial Disputes Act is again changing the parties to the dispute which it can not. In support of this submission reliance is placed upon 1958-IILLJ-752.

I have given my careful consideration to the submissions of the learned representative of the management and in my opinion there is no force in the contention that the order of reference is not correctly worded. And the authority cited by him is not applicable to this case. Under the Industrial Disputes Act there is no such thing as an individual dispute or a collective dispute. Only industrial disputes are contemplated. This term is defined in clause (k) of section 2 of the said Act and *inter alia* it means any dispute or difference between the "employers and workmen". Thus we see that only plural number is used in the definition. Now Section 2A of the Industrial Disputes Act lays down that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between the workman and his employer, connected with or arising out of his discharge, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. Thus by fiction of law even a dispute which is only between one workman and his employer if it relates to the termination of his services would be deemed to be an industrial dispute which means a dispute between workmen and the management. The Government in the order of reference has simply used the expression "industrial dispute" as defined in clause (k) of section 2 of the Industrial Disputes Act and has not changed the parties nor this Court is changing the parties. Thus there is no force in the submission of the learned representative of the management that the order of reference is not correctly worded and that the parties to the dispute are being changed.

The second ground on which the order of reference is challenged is that the order of reference is vague inasmuch as it does not indicate from which date and in what manner there has been termination of services. Thirdly it is alleged that no demand notice was given alleging that the discharge or dismissal including termination was illegal and unjustified and therefore the reference is bad in law.

There is no force in these objections as well. The learned representative of the management has not cited any authority in support of his submission that it is necessary that in the order of reference itself it should be mentioned as to from which date and in what manner there has been termination of service. If the notice of demand on the basis of which conciliation proceedings were initiated was vague inasmuch as it did not indicate on what grounds the workman attacked the legality of the order terminating his services the management could have asked for clarification. It was not done and the management before me have also not shown that they have been prejudiced in any manner. In my opinion therefore the order of reference cannot be struck down on the ground that it is vague.

There is also no force in the objection that the reference is bad because no demand notice was given under which it was alleged by the claimant that he was wrongfully dismissed from service. The claimant did protest against the wrongful termination of his services and all that can be said is that the claimant did not correctly state the reasons for the termination of his service in his demand notice. The question as to what is the effect of changing this ground of attack would be discussed while dealing with issue No. 8. It is not the case of the management that the subject matter of reference does not bring out the real dispute between the parties and on this ground the reference is invalid. I, therefore, find this issue in favour of the workman.

Issue No. 2.—It is submitted that the object of the Industrial Disputes Act is to maintain industrial peace between the workmen and the management and a dispute between an individual workman and the management is beyond the scope of the Industrial Disputes Act. It is not for this Court to express any opinion on this point. This Court is of a special jurisdiction and it can not consider the vires of any provision of law. I, therefore, hold that the objection that section 2A of the Industrial Disputes Act is *ultra vires* can not be raised in this Court.

Issue No. 3.—It is submitted that under section 55 of the Punjab Co-operative Societies Act, 1961 this Court is barred from entertaining the present dispute. In support of this submission reliance is placed upon an authority of the Calcutta High Court reported in 1968 34 FJR 426 Workmens Cooperative Industrial Home Limited *versus* Industrial Tribunal, West Bengal. In this case the services of a workman were terminated and the dispute arising out of termination of the services of a workman was referred for adjudication to the first Industrial Tribunal, West Bengal. After hearing the parties the Tribunal order the reinstatement of the workman. The Society filed a Writ Petition. It was held that the dispute regarding the termination of the services of the workman was a dispute touching the business of the society and therefore the Industrial Tribunal had no jurisdiction and the Registrar of the Cooperative Societies alone was competent to decide it. A contrary view has however been taken in 1966-I-LLS 90 which is an authority of the Full Bench of Bombay High Court. In this case it has been held that the dispute contemplated in section 91 of the Maharashtra Cooperative Societies Act the wording of which is similar to the working of section 55 of the Punjab Cooperative Societies Act were only those disputes which can be entertained by a Civil Court and are based upon some contract between the parties. It was held that an Industrial Arbitrator is unlike a Civil Court not fettered by the agreement between the parties. He is required to decide the matter not according to the agreement to contract between the parties but according to what having regard to all circumstances he considers to be just and fair. In order that the workers get a proper wage, that they are not victimized or unfairly treated and that their terms of employment generally are such as will secure industrial peace, an industrial arbitrator has the power and the authority to radically modify or alter the agreed terms of employment and to impose new obligations, in a sense he may make a new contract for the parties. The same view has been taken in 1959 Punjab 34. Following the Punjab Authority by which I am bound and the Full Bench Authority of the Bombay High Court I hold that the adjudication of the present dispute by this Court is not barred by section 55 of the Punjab Cooperative Societies Act, 1961.

Issue No. 4.—It is submitted that the present Presiding Officer was originally appointed to act as Presiding Officer of the Labour Court at Rohtak but the same appointment was never notified by the Government. Secondly it is submitted that no notification has been issued that the Presiding Officer of the Labour Court at Rohtak has been transferred to preside over the Labour Court at Faridabad nor has he been re-appointed and for these reasons he is not competent to act. There is no force in any of these objections because the appointment of the present Presiding Officer was duly notified by Notification No. 7103-3-Lab-69/25650, dated 24th August, 1969 after he had assumed charge of the office of the Presiding Officer Labour Court, Rohtak. Since the **Presiding Officer of the Labour Court** had jurisdiction throughout the State of Haryana no fresh notification of transfer or re-appointment was necessary when the Headquarters of the Court was shifted from Rohtak to Faridabad because there was no change in the jurisdiction of the Presiding Officer. It is therefore, not correct to say that there is no proper appointment of the present Presiding Officer. I find this issue also against the management.

Issue No. 5.—It is submitted that by reason of the amendment of Notification No. 11495/12474-C-Lab-57/11345, dated 7th February, 1958 by which the word "Faridabad" has been substituted for the word "Rohtak" the Labour Court at Rohtak stands abolished and therefore the reference has automatically lapsed. In my opinion there is no force in this objection either. The effect of the amendment of the notification, dated 7th February, 1958 referred to above is simply that the Headquarters of the Labour Court which was previously at Rohtak is now at Faridabad from the date the amending Notification was issued. It is incorrect to say that the Labour Court at Rohtak stands abolished and for this reason the reference has lapsed. I find this issue in favour of the workman.

Issue No. 6.—It is submitted that the expression "workman" as defined in clause(s) of Section 2 of the Industrial Disputes Act means only a person who is actually employed in an industry and therefore no industrial dispute can be raised by a person who is no longer in service. According to the learned representative of the management the protection and safeguards given by the Industrial Disputes Act can be obtained on the demand of only those workmen who are actually employed in the industry and the workman whose services have been terminated would fall within the definition of a "workman" only if his case is taken up by the persons actually employed and working in the establishments when the dispute is raised. Thus according to the learned representative of the management a workman who has been dismissed from service and whose cause has not been espoused by the workmen working in the establishment can not fall within the definition of "workman". In support of this contention reliance is placed upon 1966-I-LLJ-674.

There is no force in this submission of the learned representative as well. The authority 1966-I-LIJ-674 on which reliance has been placed is distinguishable. The question discussed in this case is whether an employee whose services are terminated can invoke the summary jurisdiction under Section 20 of the Minimum Wages Act. A workman as defined in clause(s) of Section 2 of the Industrial Disputes Act means any person employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward and for the purposes of any proceedings under the Industrial Disputes Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute. The claimant therefore clearly falls within the definition of a "workman" as reproduced above and in view of the provisions of Section 2 A of the Industrial Dispute Act, it is no longer necessary that the cause of the dismissed workmen must be espoused by his co-workers or their union. Obviously the learned representative of the management cannot challenge the vires of this revision of law in this Court by unduly stretching the definition of the workman. Accordingly, I find this issue also in favour of the workman.

Issue No. 8.—It will be convenient to take up this issue first before dealing with the case on merits. It is alleged that the claimant in his statement of claim filed in this Court has altogether changed his ground of claim on which he desires reinstatement. It is urged that in the demand notice it was alleged that the services of the claimant had been terminated in violation of the provisions of section 25F of the Industrial Disputes Act on the ground that the claimant had been wrongfully retrenched and now a new ground has been taken up and it is alleged that the dismissal of the claimant on account of his alleged mis-conduct was wrongful. It is pleaded that very basis of the complaint on which the reference has been made should not be allowed or altered and the statement of claim filed in Court should not be taken into consideration.

The submission of the learned representative of the management that the ground on which the termination of the services is challenged has been changed is correct. But in my opinion this does not prevent this Court from determining the real controversy between the parties. The dispute which has been referred for adjudication to this Court is "Whether the termination of the services of Shri Bhrima Nand, Driver is justified and in order?" It has never been the case of the management that the claimant was ever retrenched from services because he had become surplus. The argument of the management is that the claimant was guilty of misconducts as detailed in the charge-sheets frame against him and that he has been validly dismissed because the charges framed against him were duly established in the domestic enquiry held against him. It is for the management to prove that the action taken by them is correct. Therefore the questions which require determination in this case are whether a fair and proper enquiry was held against the claimant in which the charges framed against him were duly established and since the management have also produced evidence on merits, the Court will also have to decide that if the domestic enquiry held against the claimant was not valid, whether the claimant was actually guilty of the charges framed against him. With these remarks I find this issue in favour of the claimant.

Issue No. 7.—Shri Ram Singh M.W. I has proved the record of the domestic enquiry held against Shri Bhrima Nand and has stated that the enquiry Committee consisted of himself, Shri Girdhari Ram and Shri Amar Singh. It is however admitted that Shri Amar Singh did not participate in the enquiry. He gave a note, dated 24th January, 1966 and thereafter the enquiry was conducted by Shri Ram Singh and Girdhari Ram only because in the opinion of the other two members Shri Amar Singh withdrew from the inquiry without any sufficient cause. The authority which had originally constituted the enquiry committee did not re-constitute the committee by eliminating the name of Shri Amar Singh. Thus on the own showing of the management the enquiry was held by only two members of the enquiry committee although it consisted of three persons. The learned representative of the management has submitted that whenever a committee is appointed for any purpose, the proceedings of the Committee cannot be held to be void simply because all the members of the Committee do not choose to take part in the proceedings. It is urged that in the present case two out of the three members were present throughout and since they constituted the majority, the proceedings of the Committee was perfectly legal and binding on the claimant. It is further submitted that neither during the course of the enquiry nor in the claim statement the claimant ever took any objection that the enquiry committee could not proceed in the absence of one of its members and therefore the validity of the proceedings of the enquiry committee can not be questioned simply on the ground that one of its members did not participate in the proceedings.

I have carefully considered the submission of the learned representative of the management and in my opinion the proceedings of the committee are wholly void. The enquiry committee was not a committee of an ordinary type which can deliberate upon the agenda and pass resolutions by a majority vote. The Committee was in a sense a judicial committee and its proceedings can not be held to be valid if one of its members did not participate in the proceedings. If a committee which is primarily of a judicial character consists of a number of persons then all the members of the committee must take part in the proceedings and if one of the members of the committee was unable to take part in the proceedings or intentionally refused to cooperate with the other members then the only course open to the management was to reconstitute the committee.

The learned representative of the management submitted that Shri Amar Singh was simply nominated a member of the committee to safeguard the interests of the workman. There is no force in this contention either because once Shri Amar Singh was appointed as a member of the enquiry committee he was not expected to take sides. All the members of the committee were expected to act fairly and impartially and give an honest opinion as to whether the charges framed against the workman were established by the evidence produced before them. Since the enquiry committee consisted of three persons out of whom one member did not participate in the proceedings and the management also did not reconstitute the committee, therefore, it can not be said that the proceedings of such a committee are legally binding on the parties.

The learned representative of the management also submitted that the claimant has not proved that he has been prejudiced in any manner and technical provisions of law do not apply to the enquiry committees which are primarily fact finding bodies. In my opinion there is no force in this objection also. Under the circumstances of the present case it can not be said that no prejudice has been caused to the claimant. The claimant in his evidence has stated that he attended the enquiry proceedings as many as twelve times, and when he attended on 27th January, 1967 the quorum was not complete and so he made a complaint copy Ex. W.2 to the Labour Department. The claimant further states that when he attended on 25th February, 1967 he remained in attendance upto 3 P.M. but no member of the enquiry committee came to attend the meeting. So he sent a complaint copy Ex. W. 4 to the Conciliation Officer and the Labour Commissioner and thereafter he did not receive any further intimation from the committee. The claimant further says that he was not given any opportunity to cross-examine the witness who

appeared against him nor was he given any opportunity to produce his defence. In short the claimant has challenged the very bonafides of the management. He has stated that his services have been terminated because the management wanted to employ their own men. Under these circumstances it was incumbent upon the management to have acted in a manner which did not give any cause for suspicions regarding their bona fides. As already observed if the management felt that one of the members of the enquiry committee was not participating in the enquiry without any sufficient reason then the committee should have been re-constituted and the claimant informed of this fact so that if he desired he could raise an objection to the re-constitution of the committee. This was not done and in my opinion the domestic enquiry held against the claimant can not be said to be legally binding.

Now I come to the merits of the case. The charges which from the part of the first charge sheet are as under :—

(1) On 6th May, 1966 the claimant drove bus No. PNI 1924 from Wazirpur to Dori when he was under the influence of an intoxicant and he damaged the bus causing a loss of Rs. 230.

(2) on 14th September, 1966 the claimant was driving the Bus No. PNG-2944 at 15.35 hours from Delhi and he intentionally stopped the Bus near Karol Bagh so that the bus which was following might over take and carry the passengers who might be waiting on the road side and thus caused loss of revenue to the management.

(3) On 15th September, 1966 the claimant was proceeding from Delhi to Gurgaon. He stopped the Bus at a distance from the Bus stand and did not pick up the passengers and thus caused loss of revenue.

The charges framed against the claimant in the second charge sheet are as under :—

(i) on 26th November, 1966 the claimant was driving Bus No. PNG-3544 from Gurgaon to CarnaGanga.

He carried five passengers of his own.

(ii) The claimant failed to deposit the fare of the five passengers mentioned above and he over loaded the Bus.

(iii) on 23rd November, 1966 the claimant drove the Bus so carelessly that he damaged the two rear wheels drums and thus caused loss of Rs 900.

(iv) On 15th December, 1966 the claimant took an empty tin of one gallon, filled it with used mobil oil and took it to his house for his personal use without permission.

As regards the first charge we have the evidence of only Shri Partap Singh M.W. 7, Secretary of the respondent society. He says that the society suffered a loss of Rs 300 on account of repairing of Bus No. PNG-1924 when it was damaged by the claimant. Admittedly Shri Partap Singh was not present in the Bus when it was damaged and there is no evidence worth the name to prove that the claimant was actually under the influence of any intoxicant and the bus was damaged by reason of his negligence. Neither the conductor who accompanied the bus nor the person who hired the bus nor any one out of the persons who were sitting in the bus have been produced to support the case of the management. The claimant in his evidence has explained that there was a defect in the self-starter and the gear box of the bus and this fact was within the knowledge of the management. He has stated that he did not wish to take the bus but he was told to take the bus but drive it slowly. The version of the claimant is that when he was at some distance from the village of destination, the selector rod of the gear box broke down and so the bus was stopped on the road. His explanation is corroborated by the evidence of Shri Ram Sarup W.W.1. He says that he had hired the bus and was taking a marriage party to village Dori. He says that the bus went out of order when it reached near the village and it did not fall in any pit. In cross-examination he stated that the bus might have booked in the name of his uncle because the marriage of his uncle's son was to be performed. The only suggestion given to the witness was that he too was an employee of the respondent company and has been dismissed from service. In my opinion it is not possible to disbelieve the evidence of this witness on this ground alone. Shri Harika Singh, Ex-Secretary of the respondent society also supports the claimant. He says that one Shri Ram Saran booked the Bus in May, 1966 for taking a marriage party and the conductor made a report to him that the bus had gone out of order at some distance from the village destination on account of breakage of a part and not because it fell in a pit. The witness says that he received no complaint that the claimant was under the influence of liquor and was responsible for damage to the bus. In cross-examination the witness stated that he did not remember if bus was booked by Shri Ram Saran in his own name but it was correct that the gear selector rod was broken. The witness denied the suggestion that the gear box including the gears was also broken.

The learned representative of the management has submitted that the explanation given by the workman is not proved to be correct and therefore his fault is satisfactorily established. There is no force in this contention. The explanation given by the claimant may or may not be correct. The burden of proving his guilty lay upon the management and as already pointed out there is no evidence worth the name to prove this charge. In my opinion it is not proved that the claimant was under the influence of any intoxicant or that the bus was damaged as a result of his negligence.

As regards the charge that the claimant unnecessarily stopped the bus near Karol Bagh and allowed the bus following it to over take it and thus take away the passengers waiting on the road side, we have the evidence of Shri Bish Ram Conductor M.W. 4 and Shri Sitar Singh M.W. 6. Shri Bish Ram stated that on 14th September, 1966 he along with Shri Sitar Singh was in bus No. PNG-2944 which was going from Delhi to Gurgaon and they were picking up the passengers in the way and when the bus of Rajasthan passed by them and picked up the passengers from Dhola-Kuan there was a talk between Sitar Singh and the claimant. The witness stated that as he was at the back he did not know what the talk was. He however affirmed that the bus was stopped between Karol Bagh and Dhola-Kuan and the claimant did say that he was not getting any commission and that he was not supposed to drive the bus fast. Shri Sitar Singh says that the departure time of the bus going to Alwar was after the departure time of their bus and when they reached the Karol Bagh Bus stop the Rajasthan bus was already standing there and the claimant stopped his bus behind the Alwar Bus although there were no passengers to be picked up and when he was asked to move on because there were no passengers, the claimant did move but he kept it behind the Alwar Bus. He was told that if he had not stopped the bus at Karol Bagh, he could have got the passengers from Dhola-Kuan upon which the claimant stopped the bus in the way and said that the society does not give them any commission and it was none of his business to drive the bus fast for the purpose of getting passengers. What Sarv-Shri Bish Ram and Sitar Singh say may be true but the claimant can not be held to be guilty of any misconduct even if we believe their evidence. Neither of the two witness tell the Court the difference between the departure time of their bus and the Alwar Bound bus. They also do not say that the Alwar bound bus was able to over take them because their own driver was intentionally driving the bus slow and naturally it is not possible to hold a bus driver guilty of misconduct if he does not indulge in over speeding. Shri Sitar Singh has simply stated that the claimant stopped the bus behind the Alwar bus although there were no passengers. The question whether there were

were no passenger could be found only after the bus was slow down. Moreover it is not correct to hold the driver responsible for stopping or not stopping the bus at any particular bus stop for the purpose of picking up passenger. It is the duty of the conductor to give advance signal to the driver to stop or not to stop the bus at any particular stop because he alone knows whether there is or is no room for more passengers. Shri Bish Ram does not say that the driver stopped the bus although he was not required to do so. He has only stated that the bus was stopped by the claimant between Karol Bagh and Dholi-Kuan, because of some talk between Shri Sitar Singh and the claimant. If this evidence is to be believed, it means that there was some argument between Shri Sitar Singh and the claimant who was driving the bus. Naturally it was not possible for the driver to continue driving the bus if a member of staff started arguing with him because if he had continued driving in such circumstances there was a possibility of an accident and it can not therefore be said that the claimant was to be blamed if he stopped the bus when Shri Sitar Singh started arguing with him.

As regards the charge that on 15th September, 1966 the claimant stopped his bus at some distance from the bus stand and did not pick up the passengers, the management have produced no evidence in support of his charge.

As regards the charges contained in the second charge sheet Shri Sher Singh M.W. 3 Conductor states that he accompanied the claimant in bus No. PNG-3544 to Garhgantha as a conductor and this bus was specially hired by some person from Manesar. The witness states that the claimant allowed five persons to board the bus and those persons did not belong to the party of the persons who had hired the bus and so he made a report to this effect to the management but the Secretary of the Society told him that the fare of these passengers would be paid and he had no concern with it. The witness further states that there were a large number of children but the bus was over loaded by two or three passengers only. The claimant in his evidence has explained that when he took the bus to Garhgantha it was not over-loaded because it was checked at the T.R.A. post and if the bus had been over loaded he would have been challenged. It was suggested to him that at the T.R.A. post the necessary permit to enter the state of U.P. was to be checked. In my opinion it would not be safe to rely upon the uncorroborated testimony of the Conductor that the claimant on his own over-loaded the bus. The person who hired the bus did not even lodge any complaint. In view of this finding the second charge that the claimant failed to deposit the fare of the five passengers and thus committed a fraud also fails.

The next charge against the claimant is that on 28th November, 1966 he drove the bus so carelessly that he damaged the two wheels drums and thus caused a loss of Rs 900 to the respondent society. On this point we have the evidence of Shri Hukam Singh M.W. 2 who is President of the respondent society. He says that he was sitting in the bus in question and after it passed Dharu Hera, he heard a noise and so he asked the claimant to see what this noise was to which the claimant replied that this noise was on account of the shaft and he continued driving the bus. Shri Hukam Singh says that the noise increased and so he asked the claimant not to continue driving the bus and to see why this noise was coming on which the claimant got down and after superficially looking under the bus said that noise was on account of the shaft and then again started the bus. But the noise increased, and so the witness again asked the claimant to see what the matter was upon which the claimant asked the Conductor to see the cause of the noise and the conductor also said that the noise was on account of the shaft and the claimant continued driving the bus. The witness says that after the bus of the Punjab Roadways passed by them the driver and the passengers of that bus shouted to the claimant that the nuts of the rear wheels were all broken and the wheels were wobbling and only in this manner a serious accident was averted. The witness says that the holes of the rim were widened and it became to tally unserviceable and the hub was also damaged. Shri Sher Singh M.W. 3 Conductor of the bus corroborated the testimony of Shri Hukam Singh but he did not impute any motive to the claimant.

The claimant in his evidence has explained that although the bus left the bus stand in time it was made to wait before the office of the society and when the time of the next bus of Haryana Roadways approached he was asked to drive the bus fast and remain ahead of the bus of the Haryana Roadways so as to pick up all the passengers. The claimant says that he did hear the noise and wanted to stop the bus to see the cause of the noise but the President of the society goaded him to drive on so that Haryana Roadways bus did not overtake them and pick passengers. I see no reason to disbelieve the evidence of Sarvshri Hukam Singh and Sher Singh M.W.'s but the learned representative of the management has not explained, how the guilt of the claimant can be said to have been proved by their evidence. The drivers are not expected to be qualified Mechanics. It has not even suggested on behalf of the management that the claimant in fact knew the cause of the noise but with a view to cause damage to the bus he continued driving it. Shri Hukam Singh admits in his evidence that on his asking the claimant did get down to examine the bus and then again started driving the bus under the impression that the noise was on account of the shaft and when the noise continued the conductor was asked to examine the cause and he too said that the noise was on account of the shaft. Thus two laymen reached the same conclusion as to the possible cause of the noise. Shri Hukam Singh too held a responsible position in the respondent society and he was also sitting in the bus and was hearing the noise. The driver and the conductor were not in any way more qualified to diagnose the cause of the noise, it can not be said that the claimant alone was responsible for the damage caused to the bus by reason of the loose nuts. It would not be out of place to mention here that the conductor normally sits in the rear portion of the bus and in a way he was in a better position to guess the cause of the noise because the person who has to drive the bus has to hear the noise of the engine also and it is not easy for him to guess the cause of the noise coming from the rear side. In my opinion therefore the claimant can not be held responsible for the damage caused to the bus because of the loose nuts of the rear wheels. The responsibility if any should have been placed upon the mechanic whose duty it was to check the bus before it started on its journey.

The last charge against the claimant is that he misappropriated a gallon of used mobil oil. Shri Tara Chand M.W. 5 mechanic has appeared in evidence to prove this charge. He says that the claimant took a mobil oil tin of 5 liters to fill up the container and on his enquiry told him that he had taken the permission of the office for taking the mobil oil. The evidence of this witness is not very reliable. In answer to a Court question the witness stated that at the time the claimant took the mobil oil he had no suspicion in his mind that the claimant was telling a lie when he said that he had the permission of the office to take the mobil oil and he did not tell him not to take the mobil oil but in the complaint which the witness made in this connection it was stated that the claimant was asked not to take the mobil oil but he took it away. Moreover the claimant has rightly explained in his evidence that the used mobil oil is hardly of any value and the management have not even mentioned what loss they suffered on this account.

In view of my findings above I am of the opinion that the termination of the services of the claimant was not justified and in order. The claimant has been in the service of the respondent society right from the year 1952. It is not alleged that his previous record was not good. He is entitled to be reinstated with full back wages.

Dated the 7th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2216 dated the 12th May, 1969
 Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, has required under section 15 of the Industrial Disputes Act, 1947.

Dated the 7th May, 1969.

P. N. THUKRAL,
 Presiding Officer,
 Labour Court, Faridabad.

No. 3002-A.S.O.II-Lab-69/12815.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Paxit Containers, Sharapur Road, Yamunanagar.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 86 of 1968

between

SHRI HARGOBIND DASS THAKUR AND THE MANAGEMENT OF M/S PAXIT CONTAINERS, SHARANPUR ROAD, YAMUNANAGAR

Present--

Shri Raghbir Singh, for the workman.

Shri A. L. Goyal, for the management.

AWARD

Shri Har Gobind Dass Thakur was appointed as Corrugation Mistry with effect from 20th August, 1966 by M/s Paxit Containers, Sharapur Road, Yamuna Nagar, on Rs 350 per mensem. His services were terminated on 9th April, 1968, on the ground that he had deliberately slowed down production on 3rd April, 1968, 4th April, 1968 and 5th April, 1968 and that he was indulging in subversive activities. It is also urged that the workman was expected to train the other workers in operating the corrugating machine and he failed to perform this part of his duty. The termination of the services of the workman gave rise to an industrial dispute. The parties mutually agreed that the dispute be referred to this Court for adjudication. Accordingly, the Governor of Haryana in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Gazette Notification No. 9110-3Lab-SF-68/24371, dated 7th October, 1968 :—

Whether the termination of services of Shri Har Gobind Dass Thakur is legal and justified? If not, to what relief is he entitled?

On receipt of reference usual notices were issued to the parties, in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. It is submitted on behalf of the workman that the management issued a charge-sheet to him only after he had made a complaint to the Labour Inspector regarding wrongful termination of his services on 10th April, 1968 and this charge-sheet was dated 9th April, 1968. It is further alleged that this charge sheet had not been issued by the proper authority and the management modified this charge-sheet by another charge-sheet, dated 23rd April, 1968, which was signed by some person who was also not competent to issue the charge sheet. It is further alleged that no proper enquiry was held against him and he was not permitted to participate in the enquiry.

On behalf of the management it is pleaded that a fair and proper enquiry was held against the workman in which his misconduct as alleged was duly established.

The parties were given an opportunity to produce their evidence in support of their respective contentions.

Shri B. L. Wadhwa, Partner of the respondent concern, who held the inquiry against the workman has appeared as M.W. 1 and has duly proved the record of the inquiry which is marked Ex. M.W. 1/1. It was also prayed that Shri Ramji Dass Malhotra, Shop Inspector was present, during the course of the inquiry as an observer and a request was made that an opportunity be given to produce him in evidence. No application was made previously for summoning the Shop Inspector and no reason was given for not summoning him earlier. Since the correction of the record of the inquiry had not been challenged by the workman, the evidence of the Shop Inspector was not considered necessary because it is not the case of either party that he had any personal knowledge of the case.

I have carefully considered the evidence of Shri Wadhwa and in my opinion the dismissal of the workman cannot be upheld simply on the basis of this domestic inquiry held against him because the inquiry in question has not been properly conducted and evidence considered. Shri Wadhwa admits in his cross-examination that a part of the enquiry is recorded in Hindi language which he does not know. Admittedly the Inquiry Officer is a literate person and it is not clear why he allowed a part of the evidence to be recorded in a language which he does not know. Further the Inquiry Officer admits that the statement of one Shri Desh Raj Peon which is in Urdu was probably written by the witness himself in his own hand. The Inquiry Officer further admits that Shri R. V. Emerson gave him a typed statement which bears his signature and he also gave statement in Hindi language which is not known to him at all, and even after going through the records he could not say what was written in the statement. The Inquiry Officer further admits that since the statements are in Hindi language which is not known to him, he could not even give the names of all the witnesses whose statements were recorded by him. It is, therefore, impossible to imagine how the Inquiry Officer could apply his mind and give a decision as to the value which should be attached to the evidence of the witnesses who appeared before him. Further the Inquiry Officer admits that he did not adopt one set of procedure while holding the inquiry. He says that some of the witnesses gave a written statement which were read out to them.

Moreover, one anomalous position in this case is that Shri J. R. Durga who is only the manager of the respondent concern has ordered his boss Shri Wadhwa who is a partner of the respondent concern to hold the inquiry and submit a report to him. This being the position Shri Durga a subordinate had no other option but to comply with the findings arrived at by Shri Wadhwa. However the proprietor has always a right to make an inquiry regarding the alleged misconduct of his employee and its validity cannot be questioned simply on the ground that he was asked by the manager to hold the inquiry but as I have come to the conclusion that the Inquiry Officer could not come to any independent conclusion on the merits of the case because a part of the record is in a language not known to him and the evidence of all the workers were not recorded by him, it is not possible to uphold his findings. The management have not led any evidence on merits. The claimant is therefore entitled to be reinstated with continuity of service but since I am not giving any finding on merits in favour of the workman, I am of the opinion that he should get only 50 per cent of his wages. The management would also be at liberty to consider as to whether the claimant is fit to be retained in service in future and to initiate of such further inquiry as they may deem fit.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 13th May, 1969.

No. 2277, dated the 17th May, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 13th May, 1969.

No 2999-A S O-II-Lab-69/12817.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Co-operative Transport Ltd., Kaithal:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 16 of 1967

between

SHRI DIDAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S HARYANA
CO-OPERATIVE TRANSPORT LTD., KAITHAL

Present.—

Shri Harbans Lal for the workman.

Shri D. C. Chadha for the management.

AWARD

Shri Didar Singh was in the service of M/s Haryana Co-operative Transport Ltd., Kaithal, district Karnal as a Cashier/Checker. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. 108-SF-3-Lab-67, dated 3rd March, 1967:—

“Whether the dismissal of Shri Didar Singh was justified and in order ? If not, to what relief/exact compensation is he entitled ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri Hans Raj Gupta. Some evidence of the management was recorded. In the meantime it was held by the Punjab and Haryana High Court in the Writ Petition No. 1575 of 1966 in the case of M/s Haryana Cooperative Transport Ltd., Kaithal *versus* State of Punjab and others that the appointment of my learned predecessor was void as he did not possess the necessary qualifications as laid down in sub-section 3 of Section 7 of the Industrial Disputes Act, 1947. In view of this decision of the High Court it was held by me,—*vide* order, dated 13th November, 1968 that the proceedings conducted by my learned predecessor could not be held to be valid and hence proceedings were ordered to be taken. The representative of the workman made a statement that he did not wish to file any fresh statement of claim on behalf of the workman and the statement claim already filed by him before Shri Hans Raj Gupta may be accepted. The management, however filed a fresh written statement and the following issues were framed by me on 19th December, 1968:—

- (1) whether the present management cannot be held liable for the acts of their predecessor ?
- (2) whether the reference must be held to be invalid because there is no industrial dispute between the present management of the respondent society and the past employee dismissed by the previous management ?
- (3) whether the reference is barred under the provisions of the Co-operative Societies Act ?
- (4) whether the domestic enquiry held against the claimant is not legal for the reasons given in the statement of claim ?

(5) whether the dismissal of Shri Didar Singh was justified and in order ?

(6) If not to what relief/exact compensation is he entitled ?

The management was directed to produce evidence on 24th January, 1969. On the date fixed no evidence was produced and their representative Shri D.C. Chadha prayed for a date. The case was accordingly adjourned to 10th February, 1969. On the date fixed the management produced their evidence and the case was adjourned to 11th March, 1969 for the evidence of the workman. On the date fixed, one Shri Jagdish Chand appeared on behalf of the management, but he had no letter of authority from them. It was, therefore, not possible to recognise his presence and ex parte evidence of the workman was recorded and the case was adjourned to next day for further proceedings. Shri Sardul Singh, Managing Director of the respondent society appeared but he did not make any application for setting aside the ex parte proceedings. Since his labour law advisor, Shri D.C. Chadha was not present, Shri Singh did not advance any arguments and the arguments of the representative of the workman alone were heard and my findings are as under :—

Issues No. 1 and 2.—In the written statement it is pleaded that the present management cannot be held to be liable to reinstate the claimant because he was dismissed from service by the previous management. It is alleged that early in 1968 all the share-holders of the respondent society sold their shares and the same were purchased by different set of persons. Thus whosoever was carrying on as the management of the society previously ceased to hold any control over the affairs of the society and Shri Ajaib Singh took over as Chairman and Shri Sardul Singh became the Managing Director in accordance with the rules and by-laws of the society. In view of this position it is submitted that there is no industrial dispute which exists between the present management of the society and the past employees dismissed by the previous management and for this reason the present management is not liable to grant any relief to the claimant. There is no force in this submission. If the management changed hands, it would not by itself mean that the services of the employees under the previous management came to an end and that they started their service afresh under the new management. If the termination of the service of the claimant is held to be invalid then he would be deemed to have continued in service and it would be incumbent upon the present management to reinstate him. I, therefore, find these issues in favour of the workman.

Issue No. 3.—It is submitted that under section 55 of the Punjab Cooperative Societies Act, 1961 this Court is barred from entertaining the present dispute. This submission finds support from an authority of the Calcutta-High Court reported in (1968) 34 FJR 426 Workmen Cooperative Industrial Home Limited *versus* J—Industrial Tribunal West Bengal. In this case the services of a workman were terminated and the dispute arising out of termination of the services of a workman was referred for adjudication to the first Industrial Tribunal West Bengal. After hearing the parties the Tribunal ordered the reinstatement of the workman. The Society filed a Writ Petition. It was held that the dispute regarding the termination of the services of the workman as a dispute touching the business of the society and therefore the Industrial Tribunal had no jurisdiction and the Registrar of the Cooperative Societies alone was competent to decide it. A contrary view has, however, been taken in 1966-I-LLJ-90 which is an authority of the Full Bench of Bombay High Court. In this case it has been held that the dispute contemplated in Section 91 of the Maharashtra Cooperative Societies Act (the wording of which is similar to the wording of section 55 of the Punjab Co-operative Societies Act) were only those disputes which can be entertained by a Civil Court and are based upon some contract between the parties. It was held that an Industrial Arbitrator is unlike a Civil Court not fettered by an agreement between the parties. He is required to decide the matter not according to the agreement or contract between the parties but according to what having regard to all circumstances he considers to be just and fair. In order that the workers got a proper wage, that they are not victimized or unfairly treated and that their terms of employment generally are such as will secure industrial peace, an industrial arbitrator has the power and the authority to radically modify or alter the agreed terms of employment and to impose new obligations, in a sense he may make a new contract for the parties. The same view has been taken in 1959 Punjab 34. Following the Punjab Authority by which I am bound and the Full Bench Authority of the Bombay High Court. I hold that the adjudication of the present dispute by this Court is not barred by section 55 of the Punjab Co-operative Societies Act, 1961.

Issues No. 4 and 5.—These issues can also be conveniently discussed together. The enquiry was held against the claimant by one Shri Puran Singh who said to have gone out of India. Shri Ram Lal Choudhry M.W. 3 has been produced to prove this enquiry. This witness was secretary of the respondent society from 1961 to May, 1968 that is till the management changed hands. Shri Choudhry was also examined as a witness by the Enquiry Officer during the course of the domestic enquiry held against the claimant. Shri Choudhry states that he represented the management throughout the enquiry which was held by Shri Puran Singh and that the record of the enquiry was correct but in cross-examination the witness stated that on 2nd October, 1966 the claimant did not participate in the enquiry and thereupon he (witness) told the Enquiry Officer that since the enquiry against the claimant would be ex parte he (Enquiry Officer) may complete the enquiry and that he was going to Karnal and he would sign his statement there. This means that according to the witness the Enquiry Officer did not examine him at all and that he (Enquiry Officer) himself wrote down his statement which the witness later on signed. He further stated that in his presence the Enquiry Officer did not record the statements of Sarvshri Romesh Chander and Brij Mohan although according to the record of the enquiry officer the witness (Shri Choudhry) was supposed to be present when the evidence of the two witnesses was recorded. A suggestion was made to the witness that in fact he had himself dictated the report of the Enquiry to Shri Puran Singh. The witness denied this suggestion but admitted that Shri Puran Singh did consult him. The witness further stated that whatever shortage in the cash was found it was made up by the claimant and who was in those days not provided with any safe in which he could keep his cash and Passenger Tax Stamps. In view of the answers given by the witness in cross-examination which supported the case of the claimant, the management prayed that the witness be declared hostile and also sought the permission of the Court to cross-examine him. The Management in their cross-examination suggested to the witness that he had given a false evidence because the case of his wife's brother against the respondent society was also pending in this Court. It was further suggested to the witness that he had met the representative of the management during the earlier part of the day and told him that he was aggrieved against the management because they had terminated the services of his wife's brother and for this reason he would spoil the case of the management. Thus according to the own showing of the management, no reliance can be placed upon the evidence of their witness Shri Choudhry and it cannot, therefore, be said that the record of the domestic enquiry have been duly proved to be correct or that a fair and proper enquiry was held against the claimant. The management have not led any evidence on the merits of the charges framed against the workman and it cannot, therefore, be said that the termination of his services was justified and in order. He is entitled to be reinstated with continuity of service and full back wages.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2279, dated the 17th May, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL

Dated 13th May, 1969.

Presiding Officer,
Labour Court, Faridabad.

No. 3000-A.S.O.II-Lab-69/12819.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of Messrs Agriculture Plot No. 18, 13/14, Mathura Road, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 3 of 1969

between

SHRI ISRAR KHAN WORKMAN AND THE MANAGEMENT OF M/S AGRICULTURE
PLOT NO. 18, 13/14, MATHURA ROAD, FARIDABAD

Present :

Shri Israr Khan claimant with Shri Darshan Singh.

Nemo for the management.

AWARD

Shri Israr Khan was in the service of M/s Agriculture Plot No. 18, 13/14, Mathura Road, Faridabad. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (C) of the sub-section (1) of section 19 of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication *vide* Government Gazette Notification No. ID/FD/1743, dated 22nd January, 1969 :—

Whether the termination of services of Shri Israr Khan was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties under registered cover acknowledgment due. The registered cover sent to the management was received back with an endorsement that it has been refused. A fresh notice was ordered to be issued but this notice also met the same fate and it was received back with an endorsement that it has been refused. The service of the respondent concern was considered sufficient and the evidence of the workman has been recorded. The workman Shri Israr Khan in his evidence has stated that he joined the service of the respondent concern on 19th April, 1967 as a welder at Rs 150 per mensem and his services were terminated on 1st November, 1968. The workman stated that he just asked for dark glasses to enable him to do the welding work but instead of being provided with dark glasses he was simply asked to get out of the factory. The workman stated that he was not given any charge sheet or notice to show cause. He further stated that he has not been able to find any suitable or alternative employment and he is without any job although he tried for it.

It is *prima facie* proved by the evidence of the workman that the termination of his services was not justified and in order. He is entitled to be reinstated with continuity of service and full back wages. No order as to costs.

Dated 16th May, 1969.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Faridabad.

No. 2276, dated 17th May, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated 16th May, 1969.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Faridabad.